

1	3
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA	1 INDEX
STATE OF TEXAS))) VS.) NO. 12-CV-128) (DST, RMC, RLW)) ERIC H. HOLDER, JR.,) ET AL) ***** ORAL DEPOSITION OF BRIAN HEBERT *****	2 3 Appearances..... 2 4
ANSWERS AND DEPOSITION OF BRIAN HEBERT, a witness called by the United States taken before Janalyn Reeves, Certified Shorthand Reporter for the State of Texas, on the 29th day of May, 2012, between the hours of 9:30 a.m. and 7:06 p.m., in the offices of United States Department of Justice, 816 Congress, Third Floor, Austin, Texas, pursuant to the agreement of counsel for the respective parties as hereinafter set forth.	5 BRIAN HEBERT 6 Examination by Ms. Westfall 6 7 Examination by Mr. Dunn 343 8 Signature and Changes 370 9 Reporter's Certificate 372 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
2	4
1 APPEARANCES 2 3 FOR THE PLAINTIFF, STATE OF TEXAS: ATTORNEY GENERAL'S OFFICE 4 By: MR. PATRICK K. SWEETEN 209 West 14th Street 5 Austin, Texas 78701 PH: (512) 936-1307 6 7 FOR THE DEFENDANT: U.S. DEPARTMENT OF JUSTICE By: MS. ELIZABETH S. WESTFALL 8 950 Pennsylvania Avenue, NW NWB Room 7202 9 Washington, DC 20530 PH: (202) 305-7766 10 11 FOR THE INTEVENORS: BRAZIL & DUNN, LLP 12 By: MR. CHAD W. DUNN 4201 Cypress Creek Parkway Suite 530 13 Houston, Texas 77068 PH: (281) 580-6310 14 - and - 15 16 DECHERT, LLP By: MR. EZRA D. ROSENBERG 902 Carnegie Center 17 Suite 500 Princeton, New Jersey 08540-6531 PH: (609) 955-3200 18 19 ALSO PRESENT: Reynolds Brissenden Jennifer Maranzano 21 Michelle A. McLeod 22 23 24 25	1 EXHIBITS 2 NO. DESCRIPTION PAGE 3 3 Texas Weekly Article..... 163 4 5 SB 14..... 252 5 28 HB 218..... 129 6 29 SB 362..... 184 7 44 HB 1706..... 117 8 70 Texas Conservative Round Table 40 9 71 Privilege Log..... 43 10 72 Notice of Deposition..... 51 11 73 Senate Rules..... 56 12 74 Legislature Online History 126 13 75 Legislature Online History 154 14 76 Dallas News Article 212 15 77 Senate Rules 215 16 78 Letter from Dewhurst to Birdwell 239 17 79 Emergency Call 243 18 80 Letter from Van de Putte to Duncan 247 19 81 SB 14..... 249 20 82 Indiana Code..... 311 21 83 Dewhurst Statement Regarding Voter ID 319 22 84 Voter ID Bill Signing Draft..... 323 23 85 Talking Points..... 325 24 86 Standard Review..... 327 25





ESQUIRE

DEPOSITION SOLUTIONS

Toll Free: 800.211.DEPO
Facsimile: 512.328.8139

Suite 220
3101 Bee Caves Road
Austin, TX 78746
www.esquiresolutions.com

<p style="text-align: center;">9</p> <p>1 A. Sure. 2 Q. Thank you. Have you testified in court before? 3 A. No. Other than a traffic offense. 4 Q. Hope it turned out well for you. 5 Have you ever been involved in a case where the 6 State of Texas was a plaintiff or defendant? 7 A. No. 8 Q. What did you do to prepare for today's 9 deposition? 10 A. I had a meeting with my council. We met briefly 11 this morning. That was it. 12 Q. Other than your attorneys, did you speak to 13 anyone about your deposition today? 14 A. Except to say I'm being deposed, no. 15 Q. And who did you say I'm being deposed? 16 A. My wife, a few friends, former workers, 17 coworkers. 18 Q. Did you speak to Governor Dewhurst? 19 A. No. 20 Q. Did you speak to Ms. Rathgeber? 21 A. No. 22 Q. Did you speak to Blaine Brunson? 23 A. No. 24 Q. Who are the former colleagues who you spoke to 25 about your deposition?</p>	<p style="text-align: center;">11</p> <p>1 residence? 2 A. It is a mile. 3 Q. How do you get there? 4 A. I walk sometimes and I drive sometimes. 5 Q. How long does it take to walk? 6 A. 10 minutes, 5 minutes. 7 Q. How long does it take to drive? 8 A. Less. I mean, I would usually stop on the way 9 back from work so I'm not really timing it from my residence. 10 Q. Have you ever, while you've been voting in a 11 polling location, witnessed anyone trying to impersonate 12 another voter? 13 A. No. 14 Q. Have you ever witnessed a noncitizen voting? 15 A. Not that I know of. 16 Q. Have you personally ever challenged a voter's 17 eligibility to vote? 18 A. No. 19 Q. Could you tell me your educational background, 20 please, starting with college. 21 A. I graduated from Louisiana State University with 22 a degree in political science. Went to law school at 23 Washington University in Saint Louis. Graduated from 24 with a JD.</p>
<p style="text-align: center;">10</p> <p>1 A. Doug Davis, Karina Davis. Those are probably the 2 only ones. 3 Q. And could you describe your conversation with 4 Ms. Davis? 5 A. It was -- actually saw her in the lobby going 6 into meet with my council and said, oh, you're here, 7 too. And that was it. 8 Q. That was the sum total of the conversation? 9 A. That's right. 10 Q. Did you talk about the substance of what you 11 intended to testify about? 12 A. No. 13 Q. Did you bring any notes or documents with you 14 here today? 15 A. No. 16 Q. And are the papers over there in front of 17 Mr. Sweeten, are those Mr. Sweeten's or yours? 18 A. Mr. Sweeten's. 19 Q. When is the last time you voted? 20 A. In the primary, early voting just a couple weeks 21 ago. 22 Q. Do you usually vote by early voting or in person 23 on election day? 24 A. I would say I usually vote election day. 25 Q. And how far is your polling place from your</p>	<p style="text-align: center;">12</p> <p>1 Q. What year did you graduate from law school? 2 A. 1998. 3 Q. Are you licensed to practice law? 4 A. Yes. 5 Q. In which states are you admitted to the bar? 6 A. Texas. 7 Q. Any other states? 8 A. No. 9 Q. Do you list an employer with your bar membership? 10 A. Yes. 11 Q. And who is that employer? 12 A. Today it is myself. 13 Q. Since you graduated from law school in 1998, 14 could you tell me every single job that you've held in 15 chronological order? 16 A. My first job was with the Texas Legislative 17 Council, which is a non partisan drafting legal agency 18 here at the capital. I worked there for 8 years and 19 then took a position with Lieutenant Governor, David 20 Dewhurst, and I was with him for 5 years. And then this 21 January I left to do political consulting. 22 Q. Could you describe the Legislative Council? 23 A. Sure. It's 200 people total. Research document 24 production and legal, maybe it's 400, the legal division 25 is about 50 attorneys, at least it was when I was there.</p>



<p>13</p> <p>1 And they're basically the sort of law firm for the 2 Legislature. So any drafting request for bills, any 3 legal advice, constitutional advice, procedural advice, 4 the Legislative Council exists to help the legislatures 5 pass bills and serve their constituents. They're non 6 partisan so it's Republican/Democrat Committee 7 legislator, Governor, Lieutenant Governor in some cases. 8 Yeah. 9 Q. And what years were you there specifically at the 10 council? 11 A. I would have been there from '98 to I guess '05. 12 Q. Does the council serve -- 13 A. Sorry. It would have been '07. 14 Q. My apologies. 15 A. Sorry. 16 Q. I broke my own rule already. You described the 17 council as serving as a law firm for the Legislature; is 18 that right? 19 A. That's how most people think of it, yes. 20 Q. Does the council serve any other role other than 21 a law firm. For example, does it provide strategic 22 advice? 23 A. I would say, no, except to the extent, you know, 24 they would help members navigate bills through the 25 legislative process. So, you know, I would say that</p>	<p>15</p> <p>1 voter ID? 2 A. I'm not aware. 3 Q. You don't know a single person? You couldn't 4 name anyone? 5 A. The only person I know that still works there is 6 Carey Eskridge and I don't know that he worked on this 7 issue or not. 8 Q. When you were working for the Lieutenant 9 Governor, did you work with anyone in the research 10 division of the Legislative Council on voter ID? 11 A. No. 12 Q. Does the council have a governing body? 13 A. Yes. 14 Q. What's the role of the governing body? 15 A. As I understand it, it's sort of like a Committee 16 of the legislators and they approve hiring of the 17 director. Maybe budget issues. That's all I know. 18 Q. Do you know who sits on the governing body? 19 A. I don't know the current makeup of it, no. 20 Q. Does the Lieutenant Governor always play a role 21 in the governing body? 22 A. Yes, I believe so. 23 Q. Do you know what Mr. Dewhurst responsibilities 24 are in that capacity? 25 A. I'm not aware.</p>
<p>14</p> <p>1 providing strategic advice in the sense of you should do 2 this is not something that council does. It's not their 3 role. 4 Q. Does it provide policy assistance to 5 legislatures? 6 A. Again, other than sort of laying out the options 7 that a legislator might have or doing research on what 8 other states do, no. 9 Q. Are there staff members who are not lawyers who 10 work for the council? 11 A. Yes. Because they are different departments 12 within Legislative Council. So there's a legal 13 division, research division, document production 14 division, human resources and maybe one more. 15 Q. What does the research division do? 16 A. Whatever legislators request. So please tell me 17 what the 50 states do on this issue or what is the 18 history of Texas action on this given issue. 19 Q. So people in the research division are not 20 lawyers; is that correct? 21 A. I believe none of them are lawyers. Maybe there 22 are now, but I don't think so. Certainly not a 23 requirement is my memory. 24 Q. Are you aware of persons in the research 25 department who provided advice to legislators about</p>	<p>16</p> <p>1 Q. And who would know? 2 A. Maybe our general counsel. Our meaning 3 Lieutenant Governor Dewhurst general counsel. 4 Q. Who is that person? 5 A. Frank Battle. 6 Q. So I believe you were testifying it's 7 nonpartisan; is that correct? 8 A. Correct. 9 Q. Do staff people serve -- is there -- strike that. 10 Is there a majority and minority staff? 11 A. No. 12 Q. So does staff serve both sides of the isle so to 13 speak? 14 A. Correct. 15 Q. When a staff person drafts a bill, is he or she 16 also responsible for drafting amendments to the bill? 17 MR. SWEETEN: Objection. I think it's -- 18 the question is vague and general. I'm going to let you 19 answer that question. Go ahead. 20 A. Typically the same person who drafted the bill 21 would draft the amendments because they're most familiar 22 with that legislation. On a very large bill it wouldn't 23 be uncommon to have other people draft amendments and 24 then further complicate it, everyday during session 25 they've got a few Legislative Council attorneys that sit</p>



<p>17</p> <p>1 on the House floor and so, sort of, last second 2 amendments may have been drafted by someone not involved 3 through out the process.</p> <p>4 Q. (By MS. WESTFALL) Do you know with regard to 5 Senate Bill 14 the name of the person at the legislative 6 council whole was involved in drafting?</p> <p>7 A. My memory is that there are two attorneys that 8 were primarily in charge of election laws and this bill. 9 Jennifer Jackson and David Hanna.</p> <p>10 Q. Did those persons also draft the amendments to 11 Senate Bill 14?</p> <p>12 A. I don't know.</p> <p>13 Q. But based on your testimony that you just 14 provided, is it your inference that they would have 15 drafted the amendments?</p> <p>16 MR. SWEETEN: Objection, calls for 17 speculation. Go ahead.</p> <p>18 A. I think they probably would have.</p> <p>19 Q. (By MS. WESTFALL) Was there any concern or, I 20 guess, is there any concern about maintaining 21 confidentiality when you have someone in the Legislative 22 Council drafting the bill and you have bill opponents 23 who are drafting amendments?</p> <p>24 MR. SWEETEN: You're asking as a general 25 matter?</p>	<p>19</p> <p>1 bill with Legislative Council and the sponsor. 2 Q. I see. So it's your testimony that you -- there 3 weren't necessarily any strict walls between 4 communications you had with legislatures who wanted 5 amendments to be drafted, versus the legislator who 6 sponsored the bill; is that right?</p> <p>7 MR. SWEETEN: Objection, vague. 8 A. Yeah, again. I'm not clear exactly what you're 9 getting at.</p> <p>10 Q. (By MS. WESTFALL) Let me try again. 11 A. Sure. 12 Q. I believe you just testified that sometimes you 13 would share information with a bill sponsor about 14 amendments that were being contemplated; is that 15 correct?</p> <p>16 A. Sure. 17 Q. You testified that the council has a legal 18 division; is that right?</p> <p>19 A. Yes. 20 Q. Could you tell me what the legal division does as 21 opposed to the other sections of the council? 22 A. During session the legal division spends the bulk 23 of their time drafting bills and amendments and 24 assisting with, sort of, procedural questions. 25 Q. And when they're not in session, what does the</p>
<p>18</p> <p>1 MS. WESTFALL: Yes. 2 MR. SWEETEN: You an answer as a general 3 matter. 4 A. I can say from my own experience as an attorney, 5 yeah, the training of a legislative council attorney is 6 something that we spent a lot of time on was, you know, 7 sort of, building these walls that each bill has its on 8 clients, yeah. 9 Q. So in other words, you did not share information 10 with the bill sponsor about amendments you were 11 drafting. Is that your testimony? 12 MR. SWEETEN: Objection. I think assumes 13 facts not in evidence. I'm not even clear on the 14 question. So objection vague. You can answer to the 15 extent you can. 16 A. Could you repeat the -- I'm also unclear what 17 you're asking. 18 Q. (By MS. WESTFALL) Could you read back the 19 question? 20 (Requested question was read.) 21 A. Right. To the extent I was writing an amendment 22 or assisting with an amendment, I probably communicated 23 with the bill sponsor. I don't recall ever passing 24 messages back and forth between unless, again, it's 25 possible there was some general communications about the</p>	<p>20</p> <p>1 legal division do? 2 A. They have an ongoing code -- provision project 3 where they take sort of old and antiquated statutes and 4 modernize them, do intern legal research projects. 5 Q. Are there any other responsibilities the legal 6 division has that you haven't already testified about? 7 MR. SWEETEN: Again, as a general matter not 8 a specific Legislature you can answer. 9 A. Sure. They may do other things now. I know when 10 I was there that was the primary interim activity. 11 Q. (By MS. WESTFALL) When you were employed with 12 the council, what were your responsibilities? 13 A. I was a Legislative Counsel, C-O-U-N-S-E-L, and I 14 did all the things I just described, drafted bills and 15 amendments and provided legal advice and assisted with 16 the interim code projects and random special intern 17 research projects. 18 Q. Did you work on any legislation related to photo 19 ID when you were in the council? 20 A. I don't believe so. I don't think I did. And I 21 say I don't believe so because we would draft hundreds 22 and hundreds of bills and amendments when I was there 23 8 years. I don't think I did election law or much of it 24 when I was there, not as a drafter. 25 Q. Did you have an active bar license when you were</p>



<p>21</p> <p>1 with the council?</p> <p>2 A. Yes. I'm sorry. There may have been a window at</p> <p>3 the very, very beginning where my bar results came in</p> <p>4 November, but I started in October or something, but</p> <p>5 generally speaking, yes.</p> <p>6 Q. Could you describe -- and did you provide legal</p> <p>7 advice while you were employed with the council?</p> <p>8 A. Yes.</p> <p>9 Q. Could you describe that legal advice?</p> <p>10 MR. SWEETEN: I'm going object as to</p> <p>11 attorney/client privilege. As council for the TLC don't</p> <p>12 disclose any specific legal advice that you provided</p> <p>13 within that job.</p> <p>14 Q. (By MS. WESTFALL) And to clarify, I'm not asking</p> <p>15 you for the legal advice. I'm asking you to describe</p> <p>16 the nature of the advice that you provided, not the</p> <p>17 specifics.</p> <p>18 A. Sure.</p> <p>19 MR. SWEETEN: If you can answer it without</p> <p>20 revealing the substance of the communications as a</p> <p>21 general matter, you can answer it. But if you're</p> <p>22 required to provide substantive information, do not</p> <p>23 answer the question.</p> <p>24 A. Sure. I mean, it would typically be in relation</p> <p>25 to a piece of legislation is this constitutional, does</p>	<p>23</p> <p>1 MR. SWEETEN: Don't reveal the substance of</p> <p>2 any communication. Are you asking him as a general</p> <p>3 matter? But don't reveal any specific communications</p> <p>4 regarding any sort of bill with any legislators.</p> <p>5 A. I'm not sure what you mean by agreement.</p> <p>6 Q. (By MS. WESTFALL) An agreement to provide</p> <p>7 services, legal services?</p> <p>8 A. I mean, that's the way that the Legislative</p> <p>9 Council operates is the staff of attorneys -- and I'm</p> <p>10 sure there is some statutory language that I'm</p> <p>11 forgetting that says the Legislative Counsel exists to</p> <p>12 provide legal and other advice to legislatures.</p> <p>13 Q. So is it your testimony that the statute is the</p> <p>14 sole source of the agreement between the council and</p> <p>15 legislators as to the provision of legal services?</p> <p>16 A. I would say that's not my testimony. There is</p> <p>17 probably some statutory authority is all I'm saying.</p> <p>18 Q. But are you aware of any other agreements either</p> <p>19 oral or written about the provision of legal services</p> <p>20 between the council and the legislators?</p> <p>21 A. I guess I'm not aware.</p> <p>22 Q. Does the counsel provided advice on whether --</p> <p>23 strike that.</p> <p>24 Are you aware of the counsel having provided</p> <p>25 advice to any legislator on whether a bill complies with</p>
<p>22</p> <p>1 this conflict with common law or some other statutory</p> <p>2 precedent or anything else. Again, it would usually be</p> <p>3 tailored to what is this bill and is it okay.</p> <p>4 Q. And you would provide that advice in response to</p> <p>5 what kind of inquiry?</p> <p>6 A. Usually a phone call or a meeting with a staffer</p> <p>7 or a legislator.</p> <p>8 Q. Did you provide any advice in that regard</p> <p>9 pertaining to Section 5 of the Voting Rights Act?</p> <p>10 A. As a Legislative Council Attorney?</p> <p>11 Q. Yes?</p> <p>12 MR. SWEETEN: You can answer that question</p> <p>13 yes or no. Just don't provide the substance of any</p> <p>14 communication.</p> <p>15 A. Not that I recall.</p> <p>16 Q. What was your title at the council?</p> <p>17 A. Legislative Counsel and then they would have one,</p> <p>18 two, three, four. So Legislative Counsel one is where</p> <p>19 you start. I think I may have been Legislative Counsel</p> <p>20 three when I left.</p> <p>21 Q. Were you -- did you ever have the title of policy</p> <p>22 analyst at the council?</p> <p>23 A. No.</p> <p>24 Q. Did you have any agreement with the legislatures</p> <p>25 or staff to whom you provided legal advice?</p>	<p>24</p> <p>1 Section 5 of the Voting Rights Act?</p> <p>2 A. I'm not aware.</p> <p>3 Q. Did you handle election laws while you were</p> <p>4 employed with you counsel?</p> <p>5 MR. SWEETEN: Objection, asked and answered.</p> <p>6 A. No.</p> <p>7 Q. (By MS. WESTFALL) Are you aware of who did at</p> <p>8 the council handle election laws?</p> <p>9 A. I think I said Jennifer Jackson and David Hanna.</p> <p>10 Q. Was that while you were employed at the council</p> <p>11 or subsequent to that time or both?</p> <p>12 A. Both. Jennifer started after I did so there may</p> <p>13 have been -- I forget who else may have been doing</p> <p>14 election law while I was there?</p> <p>15 Q. Did you ever have any conversations with</p> <p>16 Ms. Jackson or Mr. Hanna concerning Section 5 of the</p> <p>17 Voting Rights Act?</p> <p>18 MR. SWEETEN: You're asking while he was at</p> <p>19 Texas Legislative Council.</p> <p>20 MS. WESTFALL: Yes.</p> <p>21 A. Not that I recall.</p> <p>22 BY MS. WESTFALL:</p> <p>23 Q. Was there a time when you became employed by</p> <p>24 Mr. Dewhurst?</p> <p>25 A. Yes.</p>



<p style="text-align: center;">25</p> <p>1 Q. And in what capacity were you first employed with 2 Mr. Dewhurst?</p> <p>3 A. My initial title was council for public policy. 4 And then after one session I became deputy general 5 counsel.</p> <p>6 Q. What year did you start working for him as 7 council for public policy?</p> <p>8 A. '07, January '07.</p> <p>9 Q. How did your relationship with Mr. Dewhurst 10 arise?</p> <p>11 MR. SWEETEN: Objection, vague. Go ahead.</p> <p>12 A. While at Legislative Council, I drafted a fair 13 number of bills related to school finance. I worked 14 closely with his staff. So I built a relationship with 15 staff and they had an opening and let me know.</p> <p>16 Q. When in 2007 did you start working for 17 Mr. Dewhurst?</p> <p>18 A. January I believe.</p> <p>19 Q. Who did you report to at that time?</p> <p>20 A. Julia Rathgeber was the policy director.</p> <p>21 Q. Could you describe the structure of 22 Mr. Dewhurst's office when you started working for him 23 in 2007?</p> <p>24 A. Governor Dewhurst, chief of staff, policy 25 director, there was a budget director and then a dozen</p>	<p style="text-align: center;">27</p> <p>1 part of my responsibility included general government 2 issues which occasionally flavored into election stuff, 3 but not really conduct of elections, more sort of the 4 big picture stuff.</p> <p>5 Q. Would you describe yourself as coming to the job 6 with Mr. Dewhurst as not having a lot of familiarity 7 with election law?</p> <p>8 A. I would not describe it that way. I had also 9 been a lawyer and political science major and law school 10 graduate so to the extent I was familiar with it.</p> <p>11 Q. Did you familiarity with State election code at 12 that time?</p> <p>13 A. I was familiar with it, yes.</p> <p>14 Q. Did you understand code as it pertained to voter 15 registration and election day procedures?</p> <p>16 MR. SWEETEN: Objection vague. Go ahead you 17 can answer.</p> <p>18 A. Sure. And certainly meeting with the Secretary 19 of State's office that familiarity increased.</p> <p>20 Q. (By MS. WESTFALL) When did you meet with the 21 Secretary of State's office?</p> <p>22 A. As part of my role with Governor Dewhurst I was, 23 sort of, the point person with that office for the 24 5 years there.</p> <p>25 Q. Guess I'm directing your attention to the time</p>
<p style="text-align: center;">26</p> <p>1 or more staff, policy staff and a general counsel.</p> <p>2 Q. And how large was the office in whole?</p> <p>3 A. 30, 35 people, something like that.</p> <p>4 Q. Were you hired to handle a particular issue area?</p> <p>5 A. No. I mean, I'll say that the way -- within the 6 structured question, each staff member would be in 7 charge of certain committees or in some cases issues. 8 In my case, I had two or three committees that I was in 9 charge of which encompassed a whole range of issues.</p> <p>10 Q. Could you identify those committees?</p> <p>11 A. Sure. The Senate State Affairs Committee, the 12 Senate Jurors Prudence Committee, there may have been 13 one more. Every one, sort of, got involved in the 14 budget process. So to a lesser extent the finance 15 Committee.</p> <p>16 Q. When you were heard by Mr. Dewhurst, did you have 17 anyone -- did you have any conversations with anyone in 18 his office concerning the fact that you would be 19 handling voter ID as an issue?</p> <p>20 A. I don't remember it being specifically discussed, 21 except that I would be handling some election issues.</p> <p>22 Q. Did you have any familiarity or background with 23 election issues before you started working for 24 Mr. Dewhurst?</p> <p>25 A. As a lawyer, yes. And at Legislative Council</p>	<p style="text-align: center;">28</p> <p>1 before you started working for Mr. Dewhurst, did you 2 have any contact with the Secretary of State's office?</p> <p>3 A. Not that I recall.</p> <p>4 Q. Did you have any background in federal election 5 laws, other than law school, of course?</p> <p>6 A. Right. No.</p> <p>7 Q. When you became council for public policy, did 8 you have a written job description?</p> <p>9 A. I think no, not that I recall.</p> <p>10 Q. With regard to your responsibilities for the 11 State Affairs Committee, could you describe those 12 responsibilities?</p> <p>13 A. Sure. Attending Committee meetings, working with 14 the staff and Senators on those committees, reporting 15 back to the Lieutenant Governor's office on what 16 billings were proceeding or substance of those bills.</p> <p>17 Q. He did not sit on the Committee, correct?</p> <p>18 A. Correct.</p> <p>19 Q. You would simply go to the meetings and report 20 back as to what happened; is that right?</p> <p>21 A. Correct.</p> <p>22 Q. Could you identify every person in Mr. Dewhurst's 23 office who handled the issue of voter ID from when you 24 were hired in 2007 until you stopped working for 25 Mr. Dewhurst?</p>



<p style="text-align: center;">29</p> <p>1 A. Myself. That's it. I conferred occasionally 2 with our general counsel, Frank Battle. And when you 3 say handled voter ID, I mean, you know, the chief of 4 staff and the policy director would have been aware of 5 that bill just like they were aware of every bill coming 6 through the Senate. But I wouldn't characterize it as 7 handling voter ID.</p> <p>8 Q. So you mean you handled the substance of the bill 9 for Mr. Dewhurst; is that right?</p> <p>10 MR. SWEETEN: Okay. Just -- I want to make 11 clear that with respect to your thoughts and mental 12 impressions with respect to the bill that passed, we're 13 getting into areas, I don't think we're there yet, but 14 that could be covered by legislative privilege and 15 therefore you can discuss if you had a communication, 16 you can answer general matters, but don't reveal 17 specific thoughts and mental impressions with respect to 18 a specific bill as to voter ID. But with that, you can 19 go ahead and answer the question.</p> <p>20 A. I think I handled the bulk of election 21 legislation or at least the analysis and the processing 22 of it. And that would include voter ID.</p> <p>23 Q. (By MS. WESTFALL) Was there anything else or was 24 it a general category of activity that you had 25 associated with handling election legislation besides</p>	<p style="text-align: center;">31</p> <p>1 then -- let's see now Blaine Brunson and before that Rob 2 Johnson.</p> <p>3 Q. Okay. So with regard to Mr. Brunson, what was 4 his role pertaining to voter ID.</p> <p>5 MR. SWEETEN: Same objection. I'm also 6 going to instruct with respect to communications you've 7 had internally with Lieutenant Governor's office, you 8 being an attorney that those are potentially protected 9 by the attorney/client privilege. We've discussed 10 already the legislative privilege. So to the extent you 11 can answer these questions without revealing matters 12 that are privileged, then you can do so. Okay.</p> <p>13 A. So the question.</p> <p>14 Q. What did Mr. Brunson generally do with regard to 15 voter ID? What were his responsibilities.</p> <p>16 A. I don't know because he didn't tell me all his 17 responsibilities, but what I saw him do as I just 18 mentioned; received status updates and shepherd 19 Lieutenant Governor's policies.</p> <p>20 Q. As a council for public policy, did you solely 21 report to Ms. Rathgeber?</p> <p>22 A. I directly reported to her, but the chief of 23 staff obviously was my supervisor as well.</p> <p>24 Q. How long did you serve as a council for public 25 policy?</p>
<p style="text-align: center;">30</p> <p>1 analysis and sort of processing of drafts?</p> <p>2 A. No.</p> <p>3 Q. Did you have a press person on staff who issued 4 press releases regarding voter ID for Mr. Dewhurst?</p> <p>5 A. Yes.</p> <p>6 Q. Who was that person?</p> <p>7 A. It would have been several people over the 5 year 8 period. Mike Walz, W-A-L-Z, I think is the still 9 current press secretary. Then Mike Wintemute and Rich 10 Parsons were communications guys when I first started.</p> <p>11 Q. Could you generally describe the role of the 12 chief of staff with regard to voter ID while you were in 13 office?</p> <p>14 MR. SWEETEN: You can answer. Now, she's 15 asked about specifically about voter ID. So don't 16 reveal in your answer thoughts, mental impressions or 17 conversations you've had with anybody. If you can 18 answer a question without doing so you can go ahead and 19 do it.</p> <p>20 A. All right. I think from my perspective and I 21 don't know all that he did, I mean, I would report back 22 to status updates like I would with any legislation.</p> <p>23 Q. (By MS. WESTFALL) And with regard to -- so are 24 you referring to Ms. Rathgeber?</p> <p>25 A. You asked about the chief of staff which would be</p>	<p style="text-align: center;">32</p> <p>1 A. My title changed after my first session there. 2 So it would have been '08 or '09. I honestly can't 3 remember when that switch happened.</p> <p>4 Q. And with regard to Mr. Brunson, was his role for 5 voter ID different from his role with regard to other 6 legislation?</p> <p>7 MR. SWEETEN: In answering this question, 8 don't reveal thoughts, mental impressions or opinions 9 about legislation or in furtherance of the legislative 10 process including Senate Bill 14.</p> <p>11 A. I don't think it was different.</p> <p>12 Q. (By MS. WESTFALL) So I'm sorry. You said after 13 you had served as a council for public policy, there was 14 a time when you changed your job titles; is that right?</p> <p>15 A. Correct. I was promoted to deputy general 16 counsel.</p> <p>17 Q. And when did that occur?</p> <p>18 A. Again, I think it must have been '08 or '09. It 19 was after the first session I was there which began in 20 January '07.</p> <p>21 Q. When you were council for public policy, did you 22 have an attorney client relationship with the Lieutenant 23 Governor, yourself?</p> <p>24 A. Yes.</p> <p>25 Q. What was the basis of that relationship?</p>



<p style="text-align: center;">33</p> <p>1 A. He employed me as an attorney. 2 Q. Did you have any written or oral agreement? 3 A. No, not that I'm aware. 4 Q. Were you serving as his attorney with regard to 5 all aspects of your employment as council for public 6 policy? 7 A. I'm not sure what you mean. 8 Q. I mean, were there certain responsibilities for 9 which you were providing him legal advice and serving as 10 his attorney in certain parts of your job where you were 11 not functioning as an attorney for the Lieutenant 12 Governor? 13 A. I guess it's possible. But, again, to the extent 14 I was communicating with him, they were almost always 15 generally speaking, have been some legal analysis. So 16 that's why I was there as an attorney. 17 Q. So in other words there was no differentiation of 18 your rolls? 19 A. Certainly no formal differentiation. 20 Q. And sitting here today, you can't think of any 21 role in which you were not serving as an attorney for 22 Mr. Dewhurst as council for public policy? 23 A. I can't think of any, no. 24 Q. Did your -- strike that. 25 Did you consider yourself as having an attorney</p>	<p style="text-align: center;">35</p> <p>1 A. Yes. 2 Q. In no way, shape, or form it differed; is that 3 correct? 4 A. I think that's correct. 5 Q. Did you provide any strategic advice to 6 Mr. Dewhurst? 7 MR. SWEETEN: I'm going to object to the 8 question as vague. Also don't reveal the substance of 9 any communications you've had with Mr. Dewhurst or 10 members of that office. 11 A. I mean, over 5 years the vast majority, at least 12 what I would remember of anything that could be called 13 strategic advice would have been sort of legal strategy 14 or legislative procedural strategy. 15 Q. (By MS. WESTFALL) Is it your testimony you never 16 provided any political strategic advice to Mr. Dewhurst, 17 ever? 18 MR. SWEETEN: Objection to the question as 19 vague. Also objection to the extent you're asking him 20 to reveal the specific substance of communications he's 21 had with Lieutenant Governor Dewhurst or other members 22 of Lieutenant Governor's office. If you can answer 23 without revealing the substance of those communications 24 you can do so. Otherwise I instruct you not to answer. 25 MS. WESTFALL: I'm going to object to your</p>
<p style="text-align: center;">34</p> <p>1 client relationship with members of the Legislature and 2 their staff? 3 A. Members -- you mean, House and Senate members and 4 their staffs? 5 Q. Yes. Other members of the -- 6 A. Probably not. Probably not. 7 Q. Could you describe your responsibilities as 8 deputy general counsel? 9 A. Very, very similar as council for public policy. 10 Just with a new title and a bigger paycheck. 11 Q. Can you think of any ways, other than the things 12 you've just described, more pay, in which they differed? 13 A. No, not really. I will say, at this point I 14 began taking a larger role in Open Records request. 15 Q. Did your Committee assignments change at all or 16 did they remain the same? 17 A. They remained the same. 18 Q. How long did you serve as deputy general counsel 19 for Mr. Dewhurst? 20 A. Until I left. So that would have been about 21 3 years. 22 Q. And did you have the same attorney 23 relationship with Lieutenant Governor during that period 24 of time as deputy general counsel as you did as a 25 counsel for public policy?</p>	<p style="text-align: center;">36</p> <p>1 objection. I'm asking him about his roles and 2 responsibilities. I'm not asking him about the content 3 of those discussions. I would ask you to withdraw that 4 objection, Mr. Sweeten. 5 MR. SWEETEN: I think I've already allowed 6 you to ask him questions about the general subject 7 matter of the role. And I'm also allowing him to answer 8 this to the extent it doesn't require him to reveal 9 communications between he and the Lieutenant Governor or 10 Lieutenant Governor's staff. So I will not withdraw the 11 objection. 12 MS. WESTFALL: I'm asking about the 13 existence of strategic discussions and not the content. 14 Do you understand the question? 15 A. I do. 16 BY MS. WESTFALL: 17 Q. Can you answer the question? 18 MR. SWEETEN: Objection, vague, same 19 instruction. You can answer it to the extent you can. 20 A. I think I'll just repeat what I said. You asked 21 about political strategy. I think to the extent of my 22 discussions with him and staff would have been legal and 23 procedural. 24 Q. So there's -- you never gave him strategic advice 25 that wasn't legal; is that right.</p>



<p style="text-align: center;">37</p> <p>1 A. That's probably right.</p> <p>2 Q. You testified before that you did not have an</p> <p>3 attorney/client relationship as council for public</p> <p>4 policy with members of the legislatures. Did that hold</p> <p>5 true when you were deputy general counsel?</p> <p>6 A. Yeah. I don't think the nature of that</p> <p>7 relationship changed.</p> <p>8 Q. Do members of the Senate routinely advise the</p> <p>9 Lieutenant Governor before they file legislation?</p> <p>10 A. I'm not aware.</p> <p>11 Q. Do they give them a heads up, him a heads up?</p> <p>12 MR. SWEETEN: Objection asked and answered.</p> <p>13 Objection vague. Go ahead and answer.</p> <p>14 A. I'm not aware. I'm sure it happens. I don't</p> <p>15 know the frequency.</p> <p>16 Q. (By MS. WESTFALL) When a senator is filing</p> <p>17 legislation -- have you ever learned of a circumstance</p> <p>18 where the Lieutenant Governor received advance notice</p> <p>19 before a bill was filed?</p> <p>20 MR. SWEETEN: Don't reveal any</p> <p>21 communications that you had with any members of the</p> <p>22 Lieutenant Governor's office. Don't reveal any matters</p> <p>23 that are -- that would be thoughts, mental impressions,</p> <p>24 or opinions about legislation or furtherance of the</p> <p>25 legislature process or communications between other</p>	<p style="text-align: center;">39</p> <p>1 A. I'm a independent consultant.</p> <p>2 Q. Are you employed or serve on the Texas</p> <p>3 Conservative Round Table?</p> <p>4 A. Yes. Not employed. I'm contract relationship</p> <p>5 with them.</p> <p>6 Q. I see. They're one of your clients?</p> <p>7 A. Correct.</p> <p>8 Q. Do you have any other clients?</p> <p>9 A. No.</p> <p>10 Q. Could you describe the Texas Conservative Round</p> <p>11 Table?</p> <p>12 A. Sure. It is a 501 C4, nonprofit, education</p> <p>13 policy agency -- entity. The goal is to ensure that</p> <p>14 Texans are aware of the challenges that lie ahead in</p> <p>15 finding responsible conservative solutions to those</p> <p>16 problems.</p> <p>17 Q. Are your familiar with your bio that you list on</p> <p>18 the Round Table's website?</p> <p>19 A. I don't recall all the lines. But hopefully it's</p> <p>20 not too embarrassing.</p> <p>21 Q. Did you draft the bio on the website?</p> <p>22 A. I did.</p> <p>23 Q. Do you recall that it referred to your having</p> <p>24 experience in providing strategic advice?</p> <p>25 A. I don't remember specifically, but if you say so.</p>
<p style="text-align: center;">38</p> <p>1 legislators, legislative staff, state agencies, Texas</p> <p>2 Leg. Council or constituents in answering that question.</p> <p>3 A. The question is am I aware of heads up?</p> <p>4 Q. (By MS. WESTFALL) Yes.</p> <p>5 A. I can't think of specific bills. But, again, I'm</p> <p>6 sure that, you know, there were some communications</p> <p>7 between Senators and Lieutenant Governor about upcoming</p> <p>8 legislation.</p> <p>9 Q. And who would know the answer to that question if</p> <p>10 you're not able to answer that question today?</p> <p>11 A. If -- I assume Julia Rathgeber or Blaine Brunson</p> <p>12 in their roles as chief of staff and policy director.</p> <p>13 Q. And certainly Mr. Dewhurst would know himself,</p> <p>14 correct?</p> <p>15 A. I assume.</p> <p>16 Q. Was there a time when you stopped working for the</p> <p>17 Lieutenant Governor?</p> <p>18 A. Yes.</p> <p>19 Q. Could you describe the circumstances of your</p> <p>20 departure from the office?</p> <p>21 A. Sure. This was just this January of 2012 and I</p> <p>22 just was ready for a new opportunity.</p> <p>23 Q. Are you currently employed?</p> <p>24 A. Yes.</p> <p>25 Q. Where are you employed?</p>	<p style="text-align: center;">40</p> <p>1 Q. I'm going to mark this US 70.</p> <p>2 (Exhibit No. 70 was marked.)</p> <p>3 Q. (By MS. WESTFALL) You've been handed what's been</p> <p>4 marked as US 70. Do you recognize this document?</p> <p>5 A. Yes.</p> <p>6 Q. What is it?</p> <p>7 A. It's the who we are, staff bios from the website.</p> <p>8 Q. Do you see on the second page it list you?</p> <p>9 A. Yes.</p> <p>10 Q. Do you see that it says that in the first</p> <p>11 paragraph that you provided strategic advice?</p> <p>12 A. Yes.</p> <p>13 Q. To a number of entities?</p> <p>14 A. Yes.</p> <p>15 Q. Did you provide any strategic advice to anyone</p> <p>16 concerning voter ID in the past?</p> <p>17 A. As I said earlier, I think legal and procedural</p> <p>18 strategy is what I was referring to here and that would</p> <p>19 have been the extent, generally speaking the extent of</p> <p>20 my advice to those people.</p> <p>21 Q. So is it your testimony that it is not accurate</p> <p>22 or not entirely clear from this paragraph where it says</p> <p>23 that you provided strategic advice, that was actually</p> <p>24 legal and strategic advice?</p> <p>25 MR. SWEETEN: Objection, compound. Go ahead</p>



<p>41</p> <p>1 and answer.</p> <p>2 A. I think it just says what it says. Like I said,</p> <p>3 strategic advice could be a whole range of things and it</p> <p>4 was.</p> <p>5 Q. Outside of your work for the Legislative Council,</p> <p>6 Mr. Dewhurst, did you ever provide any advice of any</p> <p>7 kind, legal or strategic, to a campaign candidate or</p> <p>8 political party about election law?</p> <p>9 MR. SWEETEN: Can you read the question</p> <p>10 back? We were interrupted.</p> <p>11 (Requested question was read.)</p> <p>12 MR. SWEETEN: You can reveal it as long as</p> <p>13 you're not revealing any sort of attorney/client</p> <p>14 privileged information. Go ahead if you think you can</p> <p>15 answer.</p> <p>16 A. No.</p> <p>17 Q. (By MS. WESTFALL) Is the no based on advice of</p> <p>18 council that or is the no that you never provided any</p> <p>19 advice on election law?</p> <p>20 A. The no is I don't believe I ever provided any</p> <p>21 advice.</p> <p>22 Q. Are you asserting any privileged here today?</p> <p>23 A. Yes.</p> <p>24 Q. Which privileges are you asserting?</p> <p>25 A. Potentially attorney/client privilege,</p>	<p>43</p> <p>1 MR. SWEETEN: Same objection.</p> <p>2 A. Yeah. I mean, I guess any of the questions that</p> <p>3 fall within the realm of developing legislation, yes.</p> <p>4 Q. (By MS. WESTFALL) Could you describe the</p> <p>5 legislative privilege you're asserting today?</p> <p>6 A. Again, it's similar to the deliberative process</p> <p>7 to the extent that legislation and communications about</p> <p>8 that legislation were exchanged. I think potentially</p> <p>9 the privilege would apply.</p> <p>10 Q. Could you mark this as US 71?</p> <p>11 (Exhibit No. 71 was marked.)</p> <p>12 Q. (By MS. WESTFALL) You've been handed what's been</p> <p>13 marked as US 71. Do you recognize this document?</p> <p>14 A. No.</p> <p>15 Q. I will represent to you, and I'm sure Mr. Sweeten</p> <p>16 will not disagree, that this is the first page of a</p> <p>17 privileged log produced by Texas in this litigation to</p> <p>18 the Attorney General. It's Page 1, and then an excerpt</p> <p>19 which runs from pages 434 through 442 pertaining to</p> <p>20 documents withheld from the Lieutenant Governor's office</p> <p>21 in this litigation on the basis of privilege.</p> <p>22 Turning your attention to page 434 of the</p> <p>23 document, and these are double sided pages so if you</p> <p>24 could follow along. The entries are not numbered, but</p> <p>25 two up from the bottom there is an entry, Bates numbered</p>
<p>42</p> <p>1 deliberative process privilege and legislative</p> <p>2 privilege.</p> <p>3 Q. Could you describe the attorney/client privilege</p> <p>4 you're asserting today?</p> <p>5 MR. SWEETEN: You can answer to the extent</p> <p>6 you know. Obviously, much of your question will be</p> <p>7 based upon what he is asked to provide. He is an</p> <p>8 attorney and has been since 1998. So he can't possibly</p> <p>9 know what you're going to ask him today. That's the</p> <p>10 same as to the other two privileges, but you can answer</p> <p>11 to the extent you know.</p> <p>12 A. Right. I think regarding my employment with</p> <p>13 Texas Legislative Council, I would assert that privilege</p> <p>14 regarding communications with legislators or their</p> <p>15 staff. Regarding my employment with Lieutenant</p> <p>16 Governor, I would assert that privilege with regarding</p> <p>17 communications with Lieutenant Governor Dewhurst and his</p> <p>18 staff.</p> <p>19 Q. (By MS. WESTFALL) And could you describe the</p> <p>20 deliberative process privilege you're asserting today?</p> <p>21 A. Again, I think to the extent that I was involved</p> <p>22 in the development of legislation I would assert that</p> <p>23 privilege.</p> <p>24 Q. Is that the sum total of what you're asserting</p> <p>25 deliberative process privilege over?</p>	<p>44</p> <p>1 3442. Do you see that line?</p> <p>2 A. Yes.</p> <p>3 Q. Could you just take a minute to review that line</p> <p>4 and let know when you've read it?</p> <p>5 A. Okay.</p> <p>6 Q. Do you remember this document?</p> <p>7 A. No. It's so general I'm not sure.</p> <p>8 Q. Do you see that it list Senator Author Bryan</p> <p>9 Hebert and recipient Brian Hebert?</p> <p>10 A. Yes.</p> <p>11 Q. And do see that the entry indicates it was</p> <p>12 confidential e-mail between attorneys and legislative</p> <p>13 staff offered for the purpose of giving legal advice on</p> <p>14 voter ID?</p> <p>15 A. Yes.</p> <p>16 Q. Do you see that? Do you know who the legislative</p> <p>17 staff people were referenced in this entry?</p> <p>18 A. I don't know.</p> <p>19 Q. Turning your attention to Page 435, three entries</p> <p>20 down from the top at Document 34452. Do you see that</p> <p>21 line?</p> <p>22 A. Yes.</p> <p>23 Q. Do you see that it refers to a news article on</p> <p>24 voter ID?</p> <p>25 A. Yes.</p>



<p style="text-align: center;">45</p> <p>1 Q. Do you recall what that news article was about? 2 A. No. 3 Q. Do you see again that it list Bryan Herbert, 4 Senator, Author, and Bryan Herbert as recipient? 5 A. Yes. 6 Q. Do you know to whom you were sending this e-mail? 7 A. I don't know. 8 Q. Could you tell me who Daniel Hodge is? 9 A. He is, I think, currently the first assistant to 10 the Texas Attorney General. 11 Q. Who is Jerry Bonay? 12 A. The name is not ringing a bell. 13 Q. Turning your attention to Page 437 of this 14 document, three entries down at Texas 34472, do you see 15 that? 16 A. Yes. 17 Q. And do you see that it list the sender author of 18 that document as Jerry Bonay and that you were the 19 recipient? 20 A. Yes. 21 Q. Does that refresh your recollection as to who 22 Mr. Bonay? 23 A. It's -- my guess is that he would be an election 24 official from Indiana, but I'm not sure of that. 25 Q. From the description of the e-mail does that</p>	<p style="text-align: center;">47</p> <p>1 A. When you -- what do you mean when you say set the 2 agenda? 3 Q. He doesn't present an agenda and then the Senate 4 must execute it pursuant to his authority; is that 5 right? 6 A. I think that's right. 7 Q. Was -- strike that. 8 Was Mr. Dewhurst a member of the State Affairs 9 Committee in 2007? 10 A. The Lieutenant Governor does not serve on 11 committees so no. 12 Q. So he was not a member of that Committee at any 13 time, correct? 14 A. Correct. 15 Q. Could you describe Mr. Dewhurst's authorities or 16 roles pursuant to the Senate rules in the State Affairs 17 Committee? 18 MR. SWEETEN: As a general matter. 19 Q. (By MS. WESTFALL) As a general matter. 20 A. He appoints the members of that Committee and 21 then extent to which any bills from any Committee are 22 considered on the Senate floor that's because they're 23 recognized for that purpose by the Lieutenant Governor. 24 Q. Can he call a Committee hearing for the State 25 Affairs Committee?</p>
<p style="text-align: center;">46</p> <p>1 refresh your recollection as to what this document is? 2 A. No. 3 Q. Could you tell me who Jennifer Fagan is? 4 A. She still is, I think, either general counsel or 5 director of the Senate State Affairs Committee. 6 Q. Who does she report to? 7 A. Senate or the Robert Duncan. 8 Q. Is she Committee staff person or is she personal 9 staff for Mr. Duncan? 10 A. I think maybe both actually. 11 Q. Who is David Duran? 12 A. He is a budget analyst for Lieutenant Governor 13 Dewhurst. 14 Q. Who is John Opperman? 15 A. Budget and policy analyst for Lieutenant Governor 16 Dewhurst. 17 Q. And who is John Green? 18 A. Budget analyst for Lieutenant Governor Dewhurst. 19 Q. Are you familiar with the roles and 20 responsibilities of the Lieutenant Governor under the 21 Senate rules? 22 A. Generally familiar, yes. 23 Q. Is it true that Mr. Dewhurst has no authority to 24 set the legislative agenda for the Senate under the 25 Senate rules?</p>	<p style="text-align: center;">48</p> <p>1 A. The State Affairs committee, no. 2 Q. Can he -- when the committee is acting as a 3 committee as a whole call a hearing for that committee? 4 A. I'm actually forgetting now whether it was 5 Lieutenant Governor or motion from a Senator to convene 6 the committee. 7 Q. Are you familiar with the American Legislative 8 Exchange Council? 9 A. I'm aware of them, yes. 10 Q. What is it? 11 A. I think it's a policy group. That's all I know. 12 Q. Do you know where it's based? 13 A. No. 14 Q. Do you have any affiliation with ALEC, yourself? 15 A. No. 16 Q. Do you know whether Mr. Dewhurst was or is a 17 member of ALEC? 18 A. I don't know. 19 Q. Have you ever received any documents from ALEC 20 related to voter ID? 21 A. No. 22 Q. Are you familiar with the National Conference of 23 State Legislatures? 24 A. Yes. 25 Q. What is that entity?</p>



<p style="text-align: center;">49</p> <p>1 A. Again, I think it's an outside policy or resource 2 group for State legislatures.</p> <p>3 Q. Have you ever attended any of its meetings.</p> <p>4 A. I've been to I think two, three conferences, yes.</p> <p>5 Q. At any of those conferences, was the subject of 6 voter ID discussed?</p> <p>7 A. Not that I recall. At least not any of the 8 presentations that I went to.</p> <p>9 Q. Do you currently have any communications with 10 Lieutenant Governor in your current role as a 11 consultant?</p> <p>12 A. No. Other than friendly.</p> <p>13 Q. How often do you communicate with the Lieutenant 14 Governor currently?</p> <p>15 A. Rarely.</p> <p>16 Q. When you were most recently employed for him, how 17 often did you communicate with him?</p> <p>18 A. Regularly.</p> <p>19 Q. How did you -- what was the method of 20 communication?</p> <p>21 A. Usually personal meetings.</p> <p>22 Q. Did you e-mail him?</p> <p>23 A. No.</p> <p>24 Q. Never?</p> <p>25 A. Never.</p>	<p style="text-align: center;">51</p> <p>1 Q. Was one 2 BrianHebert@LieutenantgovernorsstateTexasus; is that 3 right?</p> <p>4 A. Yes.</p> <p>5 Q. Was another one 0580ag@capital.com?</p> <p>6 A. No. I think it's the same e-mail, but for 7 internal, sort of, purposes I don't understand that's 8 how it shows up within the capital, I think.</p> <p>9 Q. I see. Thank you.</p> <p>10 How often did you communicate when you were 11 employed with the Lieutenant Governor with other members 12 of the legislator or their staff?</p> <p>13 A. I would say daily.</p> <p>14 Q. How did you communicate with them?</p> <p>15 A. E-mail, phone call, personal visits.</p> <p>16 Q. Did you communicate directly with members or 17 mostly their staff?</p> <p>18 A. Mostly their staff.</p> <p>19 Q. Could you mark this as 72? (Exhibit No. 72 was marked.)</p> <p>20 Q. (By MS. WESTFALL) You've been handed what's been 21 marked as US 72. Do you recognize this document?</p> <p>22 A. Yes.</p> <p>23 Q. What is it?</p> <p>24 A. Its the request for documents regarding this</p>
<p style="text-align: center;">50</p> <p>1 Q. Does he not use e-mail?</p> <p>2 A. I'm not aware.</p> <p>3 Q. Did you ever text him?</p> <p>4 A. I may have texted him before.</p> <p>5 Q. Was that on a government phone or a personal 6 phone?</p> <p>7 A. That would have been on my personal phone.</p> <p>8 Q. Was it to his government phone or his personal 9 phone?</p> <p>10 A. I don't know that he has a government phone so I 11 assuming his personal phone.</p> <p>12 Q. Did you ever text him concerning voter ID 13 legislation?</p> <p>14 A. No.</p> <p>15 Q. And did you use e-mail when you were employed 16 with the Lieutenant Governor?</p> <p>17 A. Yes.</p> <p>18 Q. Did you use both a government account and a 19 personal account for work related e-mail?</p> <p>20 A. All my work related e-mails were on the 21 government account.</p> <p>22 Q. Did you maintain two e-mail accounts when you 23 were working for the Lieutenant Governor that were work 24 related?</p> <p>25 A. Yes.</p>	<p style="text-align: center;">52</p> <p>1 trial deposition.</p> <p>2 Q. Did you -- when you received this notice, did you 3 undertake a search for responsive documents?</p> <p>4 A. Yes.</p> <p>5 Q. Could you describe your search?</p> <p>6 A. I scrolled through my personal e-mail accounts 7 and I had a conversation with the general counsel for 8 Lieutenant Governor Dewhurst since I was no longer an 9 employee at the time that I saw this. I directed him 10 where I thought responsive documents might be.</p> <p>11 Q. Were those electronic documents only?</p> <p>12 A. I think it would have been a mix of different 13 types of documents.</p> <p>14 Q. Could you describe those documents and 15 categories?</p> <p>16 A. Communications, e-mails, memos, that's probably 17 all.</p> <p>18 Q. In other words, paper and electronic?</p> <p>19 A. Well, I should say since I handled Open Records 20 request for Lieutenant Governor we had received Open 21 Records requests for all these types of documents and so 22 I had completed a responsive Open Records request and so 23 technically they would have all been paper because I 24 printed them out and they would have been in a file.</p> <p>25 Q. Did you take any electronic or paper documents</p>



<p style="text-align: center;">53</p> <p>1 when you left the employment of Mr. Dewhurst to your 2 home?</p> <p>3 A. No.</p> <p>4 Q. Did you take anything from the office related to 5 photo ID?</p> <p>6 A. No.</p> <p>7 Q. Does Mr. Dewhurst maintain more than one office?</p> <p>8 A. I think he has a business office and his capital 9 office.</p> <p>10 Q. Is the capital office for both the roles and 11 responsibilities that he has with the legislator and his 12 roles and responsibilities as a member of the executive 13 branch?</p> <p>14 A. I think, yes.</p> <p>15 Q. So one office total; is that right?</p> <p>16 A. As far as I know.</p> <p>17 Q. Does he not have separate staff for executive 18 responsibilities versus responsibilities in the Texas 19 State Senate?</p> <p>20 A. There's one capital staff.</p> <p>21 Q. Is there a person in Mr. Dewhurst's office who 22 maintains records?</p> <p>23 A. Yes.</p> <p>24 Q. Who is that person?</p> <p>25 A. Well, I take that back. Well, let me clarify, I</p>	<p style="text-align: center;">55</p> <p>1 Q. (By MS. WESTFALL) Which is simply saving 2 documents that you thought could be subject to the open 3 records request; is that right?</p> <p>4 A. I think that's fair.</p> <p>5 Q. But you took no special precautions or retention 6 of documents given that it was election related 7 legislation; is that right?</p> <p>8 A. I think that's right.</p> <p>9 Q. What is the retention policy for Mr. Dewhurst's 10 office?</p> <p>11 A. There is a schedule set in the administrative 12 code for all legislative and executive agencies and I 13 think for most items for Lieutenant Governor it's keep 14 everything and send it to the State archives and for 15 some other things it's 2 years.</p> <p>16 Q. Are you generally familiar with the Senate rules 17 in effect in the from sessions from 2005 to 2011?</p> <p>18 A. Yes.</p> <p>19 Q. Are you generally familiar with the Texas State 20 Constitution?</p> <p>21 A. Yes.</p> <p>22 Q. Could you describe in general terms the 23 differences between the Lieutenant Governor's executive 24 and legislative functions broadly?</p> <p>25 MR. SWEETEN: Objection, vague. Go ahead.</p>
<p style="text-align: center;">54</p> <p>1 should say. Each member of the staff is responsible for 2 holding on to documents they think might be required for 3 archival purposes or open records purposes. And then 4 the general counsel and when I was there deputy general 5 counsel would compile those documents as necessary to 6 respond to the open records request.</p> <p>7 Q. I see. And with regard to the photo ID bills 8 that you were involved in, was there anticipation of 9 Section 5 submissions or litigation that prompted you to 10 retain those records?</p> <p>11 MR. SWEETEN: Objection, vague. Objection, 12 I think it calls for him to reveal mental impressions 13 that he may have had with respect to the legislative 14 process. To the extent you're not providing 15 information, you can answer the question.</p> <p>16 A. Yes. We held onto records assuming people might 17 want to see them.</p> <p>18 Q. (By MS. WESTFALL) Did you hold onto and retain 19 records related to photo ID legislation in a broader 20 sense than you might otherwise have done pursuant to the 21 Texas Open Records request?</p> <p>22 MR. SWEETEN: Objection vague, objection 23 calls for speculation. But go ahead and answer.</p> <p>24 A. No. I think I would treat it like any other 25 bill.</p>	<p style="text-align: center;">56</p> <p>1 A. He's elected statewide which would be an 2 executive feature. He presides over the Legislature -- 3 the Senate which would be a legislative feature. There 4 are some things about filling his vacancy and things 5 which would make it more executive than legislative. 6 Q. Can you describe off the top of your head any 7 other roles that he has in Senate besides presiding over 8 the Senate?</p> <p>9 A. He appoints committees, he issues interim charges 10 for study by the Senate, he participate as a voting 11 senator would in the case of a tie or in the Committee 12 as a whole in the Senate. That's all. That's all I can 13 remember.</p> <p>14 Q. What are questions of order?</p> <p>15 MR. SWEETEN: As a general matter you're 16 asking what is a question of order, you can answer.</p> <p>17 Q. (By MS. WESTFALL) Do you understand the 18 question?</p> <p>19 A. Yes. I mean, I guess I'm not sure. I'm not 20 familiar if it's a term of art question of order.</p> <p>21 Q. Could you mark this?</p> <p>22 (Exhibit No. 73 was marked.)</p> <p>23 Q. (By MS. WESTFALL) You've been handed what's been 24 marked as US 73. Do you recognize this document.</p> <p>25 A. It's the rules of the Texas Senate.</p>



57

1 Q. And I will represent to you that this is an
 2 excerpt of the rules. It only contains certain rules
 3 and not all of the rules because it is otherwise a very
 4 voluminous document.

5 A. It is.

6 Q. Turn your attention to past the table of contents
 7 to Page 1 of the Senate rules. Do you see that?

8 A. Yes.

9 Q. And first of all, before we get there, could you
 10 tell me what year these rules applied to?

11 A. First page says 2011.

12 Q. Thank you. And turning your attention back to
 13 Page 1.

14 A. Okay.

15 Q. Do you see rule 1.01?

16 A. Yes.

17 Q. And the first sentence refers to, does it not,
 18 that the Lieutenant Governor is present in the Senate
 19 and decides all questions of order subject to appeal by
 20 another member. Do you see that sentence?

21 A. Yes.

22 Q. Could you tell me what that means in your words?

23 A. I suppose my interpretation would be if a member
 24 of the Senate raises any sort of objection in the form
 25 of a point of order, that a ruling on that point of

59

1 Q. And in a Committee of the whole may he vote on
 2 anything before the Committee or only certain types of
 3 bills or resolutions or?

4 A. My understanding is the Committee of the whole is
 5 only convened to consider a particular item.

6 Q. I see. So as a general matter under rule 6.18,
 7 it's only when there is a tie he may vote; is that
 8 right?

9 MR. SWEETEN: Objection vague. Misstates
 10 prior testimony. Go ahead and answer it.

11 A. 6.18 says he shall vote if there is a tie.

12 Q. (By MS. WESTFALL) Do you remember in your
 13 employment with Mr. Dewhurst how many times he voted
 14 when there was a tie?

15 A. I'm not sure I recall that ever happening.

16 Q. Can he ever vote on final passage of a bill if
 17 there is not a tie?

18 A. Not that I'm aware.

19 Q. And I believe you testified earlier that he may
 20 refer assigned bills to the Committee; is that right?

21 A. I believe technically bills are assigned to
 22 Committee through the Secretary of State -- secretary of
 23 the Senate or parliamentarians office.

24 Q. I will refer you to page 51, rule 7.06, referral
 25 bills. Do you see that?

58

1 order would be made by the Lieutenant Governor.

2 Q. Turning your attention to page 28, rule 5.15,
 3 called ruling by president. Do you see that?

4 A. Yes.

5 Q. And could you describe for me your understanding
 6 of this rule?

7 A. Again, if there's a point of order raised by a
 8 member of the Senate, the Lieutenant Governor would rule
 9 on that point of order. That ruling may be appealed to
 10 the entire Senate for a vote to overrule or uphold that
 11 ruling.

12 Q. Turning your attention to page 46, at rule 6.18,
 13 Lieutenant Governor to give casting vote. Do you see
 14 that rule?

15 A. Yes.

16 Q. Does this rule suggest that the Lieutenant
 17 Governor may vote on anything or only when there is a
 18 tie?

19 A. This rule says that if there is a tie Lieutenant
 20 Governor shall give the casting vote.

21 Q. And otherwise is the Lieutenant Governor
 22 prohibited from voting?

23 A. If there is a Committee as a whole I believe that
 24 also allows the Lieutenant Governor to participate in
 25 debate and vote.

60

1 A. Yes.

2 Q. Could you tell me what that rule means?

3 A. That means the Lieutenant Governor shall refer
 4 each bill to the proper Committee.

5 Q. Turning your attention to the next page, page 69,
 6 rule 7.23, do you see that rule, signing bills?

7 A. Yes.

8 Q. Is that -- is your understanding of this rule
 9 that it's -- it's somewhat of a ceremonial function, the
 10 signing?

11 A. I think that's fair, yes.

12 Q. He doesn't have any discretion whether he can or
 13 can't sign those bills or joint resolutions; isn't that
 14 right?

15 A. I'm not aware.

16 Q. Are you aware of any time during your employment
 17 with Mr. Dewhurst that his refused to sign
 18 legislation -- a bill or a joint resolution that had
 19 been enacted by the Legislature?

20 A. I'm not aware.

21 Q. Turning your attention to the next page, page 78,
 22 do you see rule 11.01?

23 A. Yes.

24 Q. And it indicates that the president of the Senate
 25 appoints committees and standing subcommittees; is that



ESQUIRE
DEPOSITION SOLUTIONS

Toll Free: 800.211.DEPO
Facsimile: 512.328.8139

Suite 220
3101 Bee Caves Road
Austin, TX 78746
www.esquiresolutions.com

<p style="text-align: center;">61</p> <p>1 right?</p> <p>2 A. Correct.</p> <p>3 Q. Turning your attention to the next page on 79, 4 rule 11.03, do you see the president, in other words the 5 Lieutenant Governor may appoint special committees and 6 standing committees?</p> <p>7 A. Yes.</p> <p>8 Q. Including subcommittees and the Committee of the 9 whole senate; is that right?</p> <p>10 A. Yes.</p> <p>11 Q. And on the next page, page 80, at rule 11.04, do 12 you see it indicates the president shall designate the 13 chair and vice chairs of each standing committee and 14 subcommittee?</p> <p>15 A. Yes.</p> <p>16 Q. And on page 91, at rule 12.01, do you see that 17 conference committees of the Senate are selected and 18 appointed by the Lieutenant Governor; is that correct?</p> <p>19 A. Yes.</p> <p>20 Q. And then on Page 98, at rules 13.02 and 13.03, do 21 you see that the Lieutenant Governor with regard to 22 Committee of the whole Senate may debate and vote on 23 questions?</p> <p>24 A. Yes.</p> <p>25 Q. Do you have any idea why the president is allowed</p>	<p style="text-align: center;">63</p> <p>1 answer.</p> <p>2 A. I think the Committee of the whole is less usual 3 than the regular meeting of the Senate for sure.</p> <p>4 Q. (By MS. WESTFALL) Do you have a general 5 understanding of why the purpose of the convening of the 6 Committee of the whole Senate?</p> <p>7 MR. SWEETEN: Objection, asked and answered.</p> <p>8 A. I think generally speaking a Committee of the 9 whole is convened to consider an issue. The 10 circumstances probably vary.</p> <p>11 Q. (By MS. WESTFALL) Well, I believe you just 12 testified that the Committee of the whole was convened 13 to consider two voter ID bills, correct?</p> <p>14 A. I remember those two, I remember, yes.</p> <p>15 Q. And did that occur in order to allow the 16 Lieutenant Governor to have the right to debate and vote 17 on these questions?</p> <p>18 MR. SWEETEN: Don't reveal the thoughts, 19 mental impressions, or opinions about the legislation or 20 the furtherance of the legislation process and don't 21 reveal any communications you had between the Lieutenant 22 Governor, legislators, legislative staff, state agency, 23 or Texas Council in answering this question.</p> <p>24 A. I don't know why it was convened as a Committee 25 of the whole.</p>
<p style="text-align: center;">62</p> <p>1 to debate and vote on all questions of the Committee of 2 the whole Senate?</p> <p>3 A. I don't know.</p> <p>4 Q. What's the purpose of the that rule?</p> <p>5 A. I don't know.</p> <p>6 Q. During your employment with the Lieutenant 7 Governor, how many times was a Committee of the whole 8 Senate convened.</p> <p>9 A. I would say a few times.</p> <p>10 Q. Can you remember the first time it happened?</p> <p>11 A. I know it was done on voter ID twice and it seems 12 like there may have been another time, but I can't remember 13 the circumstances.</p> <p>14 Q. For voter ID twice, do you mean in 2011 and 2009?</p> <p>15 A. That's my memory, yes.</p> <p>16 Q. And sitting here today, you can't remember 17 another time when the Committee of the whole was 18 convened; is that correct?</p> <p>19 A. I can't be certain.</p> <p>20 Q. You can't be certain that you can't remember or 21 that it didn't happen?</p> <p>22 A. I'm not certain that it did not happen other 23 times.</p> <p>24 Q. Well, it certainly was unusual, was it not?</p> <p>25 MR. SWEETEN: Objection, vague. You can</p>	<p style="text-align: center;">64</p> <p>1 Q. (By MS. WESTFALL) Is your response -- are you 2 responding based in part on asserting privilege today 3 based on your counsel's advice?</p> <p>4 A. I think the short answer is I don't know and so I 5 don't have to get to the question of whether there's a 6 privilege that attaches.</p> <p>7 Q. Does forming a Committee of the whole Senate 8 allow more expeditious consideration of legislation?</p> <p>9 MR. SWEETEN: As a general matter, 10 Elizabeth?</p> <p>11 MS. WESTFALL: Yes.</p> <p>12 MR. SWEETEN: You can answer.</p> <p>13 A. Yes.</p> <p>14 BY MS. WESTFALL:</p> <p>15 Q. How does that work?</p> <p>16 A. Typically you would have a bill that goes to a 17 Committee and then to the full Senate for a vote. And 18 the Committee of the whole allows all the Senators to 19 hear testimony and vote. I believe straight to final 20 passage from the Senate.</p> <p>21 Q. Are there two votes? One in the Committee of the 22 whole and one final passage or is it one vote to the 23 best of your knowledge?</p> <p>24 A. I cannot recall. If they're back to back 25 votes -- I mean, if they're two votes they're probably</p>



<p style="text-align: center;">65</p> <p>1 very close together.</p> <p>2 Q. I see. And they can just be held sequentially?</p> <p>3 A. They may require suspension of the rules to do</p> <p>4 that. I can't remember frankly. If it's one or two.</p> <p>5 MR. SWEETEN: Elizabeth, I think we've been</p> <p>6 going over an hour. Do you want to take a break pretty</p> <p>7 soon. And also is there any way we can move? It's</p> <p>8 getting warm in here.</p> <p>9 MS. WESTFALL: Yes. Mr. Sweeten, I fully</p> <p>10 agree with your assessment on the temperature in the</p> <p>11 room.</p> <p>12 MR. SWEETEN: We've agreed on something.</p> <p>13 MS. WESTFALL: And we can have that on the</p> <p>14 record even. Could I please ask two more questions and</p> <p>15 we will investigate a more comfortable room for this</p> <p>16 deposition to move to.</p> <p>17 MR. SWEETEN: Sure, absolutely.</p> <p>18 BY MS. WESTFALL:</p> <p>19 Q. Could you describe for me the differences that</p> <p>20 Mr. Dewhurst would play if a bill were considered by a</p> <p>21 State Affairs Committee as opposed to the Committee of</p> <p>22 the whole as a general matter?</p> <p>23 MR. SWEETEN: You can answer as a general</p> <p>24 matter.</p> <p>25 A. Yeah. I think a bill in the State Affairs</p>	<p style="text-align: center;">67</p> <p>1 A. Again, I think it's just based on my memory. I'm</p> <p>2 not sure how the Committee of the whole would</p> <p>3 communicate, frankly.</p> <p>4 Q. I'm just -- let me rephrase the question. Are</p> <p>5 you aware of any communications concerning having photo</p> <p>6 ID considered by the Committee of the whole?</p> <p>7 A. No.</p> <p>8 Q. As it related to Section 5 in the Voting Rights</p> <p>9 Act?</p> <p>10 A. No.</p> <p>11 MR. SWEETEN: Same objection.</p> <p>12 Q. (By MS. WESTFALL) What is the Lieutenant</p> <p>13 Governor's role when the Senate is considering a bill on</p> <p>14 the floor?</p> <p>15 A. He recognizes senator to bring up a bill, he</p> <p>16 answers questions, points of order, questions of order,</p> <p>17 and helps the bill proceed administratively through the</p> <p>18 process.</p> <p>19 Q. Does he manage the bill or is the bill sponsor</p> <p>20 the one who is managing the floor debate?</p> <p>21 A. His role is only procedural. So managing would</p> <p>22 just be recognizing senators to ask questions.</p> <p>23 Q. And turning back to Exhibit US 73, I asked you a</p> <p>24 number of questions about a number of rules and the</p> <p>25 senate rules related to the Lieutenant Governor's</p>
<p style="text-align: center;">66</p> <p>1 Committee the Lieutenant Governor would not have a</p> <p>2 direct role in the way he would in a committee of the</p> <p>3 whole where he gets to participate and vote.</p> <p>4 Q. Are there any other differences you're aware of?</p> <p>5 A. No.</p> <p>6 Q. Are you aware of any communications concerning</p> <p>7 consideration of photo ID legislation by the Committee</p> <p>8 of the whole and as it pertained to Section 5 of the</p> <p>9 Voting Rights Act?</p> <p>10 MR. SWEETEN: Objection to the question as</p> <p>11 compound. I think if you're asking him as matters of</p> <p>12 public record, he can answer that question. If you're</p> <p>13 asking him, you know, information that would reveal</p> <p>14 communications that he's had with the individuals or</p> <p>15 entities that we've enumerated then that would be</p> <p>16 legislative and privileged, but then I'll go ahead and</p> <p>17 let him answer.</p> <p>18 A. If you could repeat the question.</p> <p>19 Q. (By MS. WESTFALL) Certainly. Are you aware of</p> <p>20 any communications concerning consideration of photo ID</p> <p>21 legislation by the Committee of the whole and as it</p> <p>22 pertained to Section 5 of the Voting Rights Act?</p> <p>23 A. No.</p> <p>24 Q. And are you asserting privilege in your response</p> <p>25 or is that simply based on your memory?</p>	<p style="text-align: center;">68</p> <p>1 powers, are you aware of any other powers in the senate</p> <p>2 rules that were applicable in 2011 that we haven't</p> <p>3 already discussed and referred to and to which you</p> <p>4 answered questions?</p> <p>5 A. I'm not aware of any.</p> <p>6 Q. So in other words, what you've testified about</p> <p>7 any rules that I've identified in the senate rules are</p> <p>8 the sum total of the Lieutenant Governor's powers and</p> <p>9 responsibilities in the senate in 2011; is that your</p> <p>10 understanding?</p> <p>11 A. Yeah. I mean, generally speaking I'm looking at</p> <p>12 it now, if there's some matter that's open for</p> <p>13 interpretation or the rules are silent then other</p> <p>14 parliamentary precedent can be used. But other than</p> <p>15 that I think the senate rules are the sum of his</p> <p>16 authority.</p> <p>17 Q. And the rules to which you answer questions and</p> <p>18 which we identified in the record in your deposition</p> <p>19 today, are those the sum total of the rules that define</p> <p>20 the Lieutenant Governor's powers in the 2011 session, to</p> <p>21 if best of your knowledge sitting other day?</p> <p>22 MR. SWEETEN: Objection, asked and answered.</p> <p>23 A. I would say -- I mean, the universe of his powers</p> <p>24 presiding over the senate. The Lieutenant Governor has</p> <p>25 got other constitutional powers and authority that would</p>
<p style="text-align: center;">65</p> <p>1 very close together.</p> <p>2 Q. I see. And they can just be held sequentially?</p> <p>3 A. They may require suspension of the rules to do</p> <p>4 that. I can't remember frankly. If it's one or two.</p> <p>5 MR. SWEETEN: Elizabeth, I think we've been</p> <p>6 going over an hour. Do you want to take a break pretty</p> <p>7 soon. And also is there any way we can move? It's</p> <p>8 getting warm in here.</p> <p>9 MS. WESTFALL: Yes. Mr. Sweeten, I fully</p> <p>10 agree with your assessment on the temperature in the</p> <p>11 room.</p> <p>12 MR. SWEETEN: We've agreed on something.</p> <p>13 MS. WESTFALL: And we can have that on the</p> <p>14 record even. Could I please ask two more questions and</p> <p>15 we will investigate a more comfortable room for this</p> <p>16 deposition to move to.</p> <p>17 MR. SWEETEN: Sure, absolutely.</p> <p>18 BY MS. WESTFALL:</p> <p>19 Q. Could you describe for me the differences that</p> <p>20 Mr. Dewhurst would play if a bill were considered by a</p> <p>21 State Affairs Committee as opposed to the Committee of</p> <p>22 the whole as a general matter?</p> <p>23 MR. SWEETEN: You can answer as a general</p> <p>24 matter.</p> <p>25 A. Yeah. I think a bill in the State Affairs</p>	<p style="text-align: center;">67</p> <p>1 A. Again, I think it's just based on my memory. I'm</p> <p>2 not sure how the Committee of the whole would</p> <p>3 communicate, frankly.</p> <p>4 Q. I'm just -- let me rephrase the question. Are</p> <p>5 you aware of any communications concerning having photo</p> <p>6 ID considered by the Committee of the whole?</p> <p>7 A. No.</p> <p>8 Q. As it related to Section 5 in the Voting Rights</p> <p>9 Act?</p> <p>10 A. No.</p> <p>11 MR. SWEETEN: Same objection.</p> <p>12 Q. (By MS. WESTFALL) What is the Lieutenant</p> <p>13 Governor's role when the Senate is considering a bill on</p> <p>14 the floor?</p> <p>15 A. He recognizes senator to bring up a bill, he</p> <p>16 answers questions, points of order, questions of order,</p> <p>17 and helps the bill proceed administratively through the</p> <p>18 process.</p> <p>19 Q. Does he manage the bill or is the bill sponsor</p> <p>20 the one who is managing the floor debate?</p> <p>21 A. His role is only procedural. So managing would</p> <p>22 just be recognizing senators to ask questions.</p> <p>23 Q. And turning back to Exhibit US 73, I asked you a</p> <p>24 number of questions about a number of rules and the</p> <p>25 senate rules related to the Lieutenant Governor's</p>
<p style="text-align: center;">66</p> <p>1 Committee the Lieutenant Governor would not have a</p> <p>2 direct role in the way he would in a committee of the</p> <p>3 whole where he gets to participate and vote.</p> <p>4 Q. Are there any other differences you're aware of?</p> <p>5 A. No.</p> <p>6 Q. Are you aware of any communications concerning</p> <p>7 consideration of photo ID legislation by the Committee</p> <p>8 of the whole and as it pertained to Section 5 of the</p> <p>9 Voting Rights Act?</p> <p>10 MR. SWEETEN: Objection to the question as</p> <p>11 compound. I think if you're asking him as matters of</p> <p>12 public record, he can answer that question. If you're</p> <p>13 asking him, you know, information that would reveal</p> <p>14 communications that he's had with the individuals or</p> <p>15 entities that we've enumerated then that would be</p> <p>16 legislative and privileged, but then I'll go ahead and</p> <p>17 let him answer.</p> <p>18 A. If you could repeat the question.</p> <p>19 Q. (By MS. WESTFALL) Certainly. Are you aware of</p> <p>20 any communications concerning consideration of photo ID</p> <p>21 legislation by the Committee of the whole and as it</p> <p>22 pertained to Section 5 of the Voting Rights Act?</p> <p>23 A. No.</p> <p>24 Q. And are you asserting privilege in your response</p> <p>25 or is that simply based on your memory?</p>	<p style="text-align: center;">68</p> <p>1 powers, are you aware of any other powers in the senate</p> <p>2 rules that were applicable in 2011 that we haven't</p> <p>3 already discussed and referred to and to which you</p> <p>4 answered questions?</p> <p>5 A. I'm not aware of any.</p> <p>6 Q. So in other words, what you've testified about</p> <p>7 any rules that I've identified in the senate rules are</p> <p>8 the sum total of the Lieutenant Governor's powers and</p> <p>9 responsibilities in the senate in 2011; is that your</p> <p>10 understanding?</p> <p>11 A. Yeah. I mean, generally speaking I'm looking at</p> <p>12 it now, if there's some matter that's open for</p> <p>13 interpretation or the rules are silent then other</p> <p>14 parliamentary precedent can be used. But other than</p> <p>15 that I think the senate rules are the sum of his</p> <p>16 authority.</p> <p>17 Q. And the rules to which you answer questions and</p> <p>18 which we identified in the record in your deposition</p> <p>19 today, are those the sum total of the rules that define</p> <p>20 the Lieutenant Governor's powers in the 2011 session, to</p> <p>21 if best of your knowledge sitting other day?</p> <p>22 MR. SWEETEN: Objection, asked and answered.</p> <p>23 A. I would say -- I mean, the universe of his powers</p> <p>24 presiding over the senate. The Lieutenant Governor has</p> <p>25 got other constitutional powers and authority that would</p>



<p style="text-align: center;">69</p> <p>1 be outside of these senate rules. 2 Q. Okay. But can you think of any rules that we 3 haven't discussed today in your deposition that pertain 4 to the Lieutenant Governor's powers? 5 MR. SWEETEN: You're asking about -- 6 MS. WESTFALL: In the Senate rules. 7 MR. SWEETEN: In the Senate rules. 8 A. No. 9 Q. (By MS. WESTFALL) Thank you. Why don't we take 10 a break? 11 (Brief recess.) 12 BY MS. WESTFALL: 13 Q. The Lieutenant Governor can't ever introduce 14 legislation in his own name; is that right? 15 A. That is correct. 16 Q. Could you describe his powers concerning the 17 development of legislation? 18 A. I think he issues interim charges so directing 19 committees of the senate to study certain issues. 20 Again, he recognizes Senators on the floor so in that 21 sense he decides the agenda for the session. 22 Q. With regard to interim charges, is there a rule 23 in the senate rules that authorizes him to do that and 24 requires the senate to follow those charges? 25 A. I'm not aware if those are constitutional rules</p>	<p style="text-align: center;">71</p> <p>1 would reveal mental impressions or opinions about 2 legislative or in furtherance of the legislative process 3 or any communications surrounding those. So to the 4 extent you can answer this question without doing so, 5 you can answer. 6 A. I guess I can't recall examples that would not 7 include my personal communications. 8 Q. (By MS. WESTFALL) So you're asserting privilege 9 with regard to that answer? 10 A. I think, yes. Yes. 11 Q. And Mr. Dewhurst role with regard to introduction 12 of bills is limited to what you just testified to and 13 advocating with legislatures to introduce his 14 legislation; is that correct? 15 MR. SWEETEN: Objection asked and answered. 16 A. I think certainly, you know, he is an advocate 17 for his own priorities. 18 Q. In addition to the ability to introduce 19 legislation, are there any other powers that members of 20 the senate have that the Lieutenant Governor does not 21 have? 22 A. I mean a senator can introduce a bill, the 23 Lieutenant Governor then refers it to the Committee and 24 recognizes it on the floor if it makes it out of 25 Committee and then recognizes them again if there's a</p>
<p style="text-align: center;">70</p> <p>1 authority. 2 Q. Does his office develop legislation for other 3 members to introduce? 4 A. I think -- 5 MR. SWEETEN: Don't reveal specific thoughts 6 or impressions about pending legislation or matters 7 related to the legislative process in answering the 8 question. You can answer as a general matter. 9 A. Generally, the Lieutenant Governor like any 10 elected official would layout their priorities before 11 any session or during any session and to the extent 12 those bills are picked up and sponsored by senators. 13 There's a connection there. 14 Q. Does he ordinarily set forth a legislative agenda 15 in particular legislative language for bills that would 16 go along with that agenda? 17 A. I'm not sure -- 18 MR. SWEETEN: Don't reveal legislatively 19 privileged information, but you can answer. 20 A. I'm not sure if it's typical, but I think there 21 are probably times when, you know, he suggests 22 particular language. 23 Q. When do you remember that having occurred? 24 MR. SWEETEN: At this point, I don't want 25 you to reveal any communications with respect to -- that</p>	<p style="text-align: center;">72</p> <p>1 change in the House and the conference Committee report 2 to be considered as well as appointing conference 3 Committee members. 4 Q. But turning back to my question, are there other 5 powers that members of the senate have in addition to 6 introducing bills, that you can think of sitting here 7 today that the Lieutenant Governor does not have? 8 A. The voting Committee. That's probably it from a 9 legislative procedural standpoint. 10 Q. While you were employed with Mr. Dewhurst, did 11 you assist in developing legislation? 12 A. Yes. 13 Q. Can you describe that process generally? 14 MR. SWEETEN: In answering this question, I 15 don't want you to reveal thoughts, mental impressions, 16 or opinions about legislation or in furtherance of the 17 legislation process. Just asking as a general matter to 18 the extent you can answer that without revealing 19 attorney/client privilege or legislative privilege or 20 the deliberative process privilege, you can go ahead and 21 do so. 22 A. I think generally as a staffer, we would be made 23 aware of an issue either because Lieutenant Governor 24 informed us it was a priority or because the 25 constituents were talking about it or because it was</p>



<p style="text-align: center;">73</p> <p>1 raised in one of these interim Committee hearings or 2 otherwise just reading the newspaper what's a problem 3 and what's not. So from any number of sources, the 4 staff would decide this is something, you know, we 5 should support or help with and then so my role as a 6 staffer -- as an attorney on the staff would be to 7 sometimes to draft language since I had some experience 8 from that from a former job, to provide legal advice 9 about what's possible and not possible. And just 10 generally talk procedurally about how to make that 11 happen.</p> <p>12 Q. Could you describe the breakdown given your 13 experience in the council as to when you would, 14 yourself, draft the bill and whether it -- when you 15 would refer it to the council to draft it, kind of in a 16 percentage way?</p> <p>17 A. Most of the time I did not request legislation. 18 It was not my job to provide particular language 19 typically. So I guess the answer is, sort of, 20 emergency, last second, we need this language now 21 situations is when I was most likely to assist in 22 drafting.</p> <p>23 Q. How often did that occur in your employment with 24 the Lieutenant Governor?</p> <p>25 MR. SWEETEN: You can answer as a general</p>	<p style="text-align: center;">75</p> <p>1 want this bill to do that and here's what, you know, 2 additional details and then they'll open up a file on 3 their end and then communicate as necessary to get 4 details.</p> <p>5 Q. Did you oversee research for the legislation?</p> <p>6 MR. SWEETEN: Any legislation?</p> <p>7 MS. WESTFALL: Any legislation.</p> <p>8 A. When you say oversee research?</p> <p>9 MR. SWEETEN: Objection, vague. Go ahead.</p> <p>10 BY MS. WESTFALL:</p> <p>11 Q. Let me withdraw that question and ask it a 12 different way.</p> <p>13 Were you responsible for tasking anyone or 14 conducting yourself, any research, to support the bill 15 drafting process?</p> <p>16 MR. SWEETEN: Objection, vague. You can 17 answer it.</p> <p>18 A. I can only speak for -- I did research on bills, 19 but I was not supervising anyone else's research.</p> <p>20 Q. Did you do any research for any voter ID bill 21 while you were employed with the Lieutenant Governor?</p> <p>22 MR. SWEETEN: You can answer as to whether 23 or not you did research on a bill.</p> <p>24 A. Yes.</p> <p>25 Q. (By MS. WESTFALL) Did you do research for voter</p>
<p style="text-align: center;">74</p> <p>1 matter. Don't reveal matters of privilege.</p> <p>2 A. It would happen -- it was not unusual, but, 3 again, there would be lots and lots of preparation 4 leading up to the floor debate. I guess floor debate is 5 what I would typically be called upon to help with a 6 last minute amendment.</p> <p>7 Q. (By MS. WESTFALL) But did you do primary 8 drafting of legislation for Mr. Dewhurst?</p> <p>9 A. As a general matter, no.</p> <p>10 Q. You never drafted any bills to be filed for 11 Mr. Dewhurst?</p> <p>12 A. I didn't say that. I said as a general matter, 13 my role was not to draft all the bills even in my 14 subject area. I'm sure I drafted some drafts of 15 legislation.</p> <p>16 Q. How many bills were you the primary drafter for 17 during your employment with Mr. Dewhurst?</p> <p>18 A. Gosh, I don't know. Not that many.</p> <p>19 Q. A handful?</p> <p>20 A. A dozen or less.</p> <p>21 Q. And how, as a general matter, do you interact 22 with the council in drafting and creating legislation?</p> <p>23 MR. SWEETEN: Objection, vague.</p> <p>24 A. I think the formal process is you get on the 25 council website, there's a form you fill out about we</p>	<p style="text-align: center;">76</p> <p>1 ID in 2010?</p> <p>2 A. I can not recall. I'm assuming I probably did 3 since the bill came up in the session before. But 4 depending on when in 2010, and I can't remember when the 5 legislation was filed or discussed.</p> <p>6 Q. Did you develop or contribute to the Lieutenant 7 Governor's legislative agenda for any of the years for 8 which you were employed with the Lieutenant Governor?</p> <p>9 A. Yes.</p> <p>10 Q. And which years was that?</p> <p>11 MR. SWEETEN: Don't reveal specifics as to 12 what you did. She's asking you the year. You can 13 answer.</p> <p>14 A. Sure.</p> <p>15 Q. (By MS. WESTFALL) Do you understand the 16 question?</p> <p>17 A. Yes. And I think probably most or all staff 18 contributed in some way each year. So in my case 19 probably the whole time I was there I had some input 20 into that.</p> <p>21 Q. How many legislative priorities would the 22 Lieutenant Governor typically have?</p> <p>23 MR. SWEETEN: Okay. Don't reveal 24 communications that you had with the Lieutenant Governor 25 in answering this, members of his staff. Don't reveal</p>



<p>77</p> <p>1 matters that are legislatively privileged or matters 2 covered by the deliberative process in answering the 3 question. 4 A. I can't -- I can't recall any given number or any 5 given session or year, but my guess is tenish. I really 6 don't know. 7 Q. (By MS. WESTFALL) Did that remain stable 8 throughout your employment with the Lieutenant Governor 9 or did the number change from year to year? 10 MR. SWEETEN: Same objection and 11 instruction. Go ahead. 12 A. I don't recall. I'm guessing it changed. 13 Q. (By MS. WESTFALL) Did it get larger or smaller 14 over time? 15 A. I don't recall. 16 Q. Besides drafting bills and trying to get 17 legislatures to introduce them, how did you otherwise 18 ensure that Mr. Dewhurst's agenda was carried out? 19 MR. SWEETEN: I'm going to instruct you with 20 respect to the legislative privilege, don't reveal 21 thoughts, mental impressions, opinions about legislation 22 or matters in further of the legislative process. Don't 23 reveal any communications you had with legislators, 24 legislative staff, State agencies, Texas Legislative 25 Council. Also don't reveal matters that are subject to</p>	<p>79</p> <p>1 Q. Did you work with legislatures and their staff in 2 furthering the Lieutenant Governor's agenda? 3 MR. SWEETEN: Objection, vague. You can 4 answer yes or no if you worked with -- if you worked 5 with. 6 A. Yes. 7 Q. (By MS. WESTFALL) Which legislatures did you 8 most often work with? 9 A. Members of the Texas Senate. 10 Q. Could you identify particular senators? 11 A. Sure. 12 MR. SWEETEN: While you're answering, you 13 can answer, you can identify the fact that a 14 communication occurred. Approximate date, the means, 15 but do not reveal the substance of the conversation or 16 what it was about. 17 MS. WESTFALL: Mr. Sweeten, I would ask that 18 you identify the legislative act over which you are 19 asserting privilege because there is none. I'm asking 20 hit about procedure. 21 MR. SWEETEN: Well -- 22 MS. WESTFALL: And his job description and 23 what he did generally. There is no legislation. 24 MR. SWEETEN: I've let him answer a lot 25 about his job description so we've done that. Now, to</p>
<p>78</p> <p>1 the deliberative process or the attorney/client 2 privilege. 3 MS. WESTFALL: Mr. Sweeten, I'm not asking 4 about any particular legislative acts. This is wholly 5 outside of your objections. I ask that you withdraw 6 with this line of questions. 7 MR. SWEETEN: Why don't read the question 8 back. 9 MS. WESTFALL: Court reporter, could you 10 read that back? 11 (Requested question was read.) 12 MR. SWEETEN: Same objection, same 13 instruction. You can answer to the extent you're not 14 revealing matters of privilege drop develop. 15 A. Generally, on issues within my areas, coverage, I 16 would, again, update our staff on procedurally where the 17 bills were. I was available as a resource to answer 18 questions. Usually legal questions for our staff and 19 for the Texas Senate. 20 BY MS. WESTFALL: 21 Q. As deputy general counsel for the Lieutenant 22 Governor, did you have staff underneath you? 23 A. No. 24 Q. Who reported to you? 25 A. No.</p>	<p>80</p> <p>1 the extent you're asking him with whom he dealt I'm 2 saying don't reveal the substance of the conversation. 3 MS. WESTFALL: We're not discussing a bill. 4 MR. SWEETEN: Okay. Well, to the extent we 5 are, to the extent your answer would be revealing 6 information about a specific bill, then I think that is 7 covered. He can provide the information you're 8 requesting to -- as long as he's not revealing the 9 substance of those communication. 10 MS. WESTFALL: Mr. Sweeten, if he's 11 answering a question about a particular bill that's a 12 different question than I have imposed. 13 MR. SWEETEN: If her question is limited, 14 you can answer as a general matter the individuals with 15 whom you had communication. I think that's your 16 question. Go ahead. 17 A. So the legislators that I most often communicated 18 with, Senator Duncan, Senator Williams, Senator Eltife, 19 Senator Huffman, Senator Seliger, I would say that's 20 probably who I communicated with the most. 21 BY MS. WESTFALL: 22 Q. And with regard to the Governors -- I mean 23 Lieutenant Governor's role with regard to the State 24 Affairs Committee, would it be the same set of senators 25 or a different set of senators?</p>



<p style="text-align: center;">81</p> <p>1 A. I think most of those senators serve or served on 2 State Affairs Committee.</p> <p>3 Q. Did you communicate directly with legislators or 4 with their staff?</p> <p>5 A. Both.</p> <p>6 Q. Who more often, legislators or staff?</p> <p>7 A. Staff.</p> <p>8 Q. Did you communicate with the Governor Perry's 9 staff about Lieutenant Governor's responsibilities on 10 State Affairs Committee?</p> <p>11 A. I'm not sure if I communicated with Governor's 12 staff specific to State affairs matters. I think I 13 probably did. I think the Governor has a staff member 14 assigned to most major committees so I'm sure there were 15 communications about bills.</p> <p>16 Q. But sitting here today you can't recall 17 communications between Governor Perry's staff and you 18 regarding State Affairs matters?</p> <p>19 A. I would say, yes, there were communications.</p> <p>20 Q. Was it about photo ID?</p> <p>21 MR. SWEETEN: Don't reveal the substance of 22 the specific communication. You can reveal the general 23 subject matter.</p> <p>24 MS. WESTFALL: Mr. Sweeten, that is a 25 general subject matter that you list throughout your</p>	<p style="text-align: center;">83</p> <p>1 A. I may have, but I don't recall any specific 2 e-mails.</p> <p>3 Q. And who was the person in Governor Perry's office 4 with whom you communicated?</p> <p>5 A. The elections person was Michael Scofield and it 6 seems like there was a woman's name whom I'm forgetting 7 when I first started in '07.</p> <p>8 Q. As part of your roles and responsibilities, did 9 you advise Lieutenant Governor when he should exercise 10 his discretion to cast a vote?</p> <p>11 MR. SWEETEN: You're asking about the 12 substance of communication that he had with Lieutenant 13 Governor Dewhurst. I think that that's clearly under 14 the attorney/client privilege in the legislative 15 privilege as well as the deliberative process privilege.</p> <p>16 MS. WESTFALL: I'm not asking about the 17 substance of the communication. I'm asking about 18 whether he advised as part of his job responsibilities. 19 It's not a substance of a communication. It doesn't 20 pertain to a legislative act. It's wholly outside of 21 anything which you could reasonably assert privilege.</p> <p>22 MR. SWEETEN: I'm going to let him answer as 23 to whether or not he advised as to who framed it. Go 24 ahead.</p> <p>25 MS. WESTFALL: Thank you.</p>
<p style="text-align: center;">82</p> <p>1 privilege log so I would ask that you let him answer the 2 question.</p> <p>3 MR. SWEETEN: And I'm letting him.</p> <p>4 A. There are communications about election bills 5 including photo ID.</p> <p>6 BY MS. WESTFALL:</p> <p>7 Q. About how many did you have regarding photo ID?</p> <p>8 A. I probably didn't have many communications 9 outside the weekly Committee hearings and even then not 10 every week about elections and even then not every time 11 about voter ID. So I would say no more than a handful.</p> <p>12 Q. And just to clarify your testimony, you had no 13 more than a handful of conversations with Governor 14 Perry's staff about photo ID; is that correct?</p> <p>15 A. I think that's correct.</p> <p>16 Q. And were those communications chiefly in the 2009 17 through 2011 period of time?</p> <p>18 A. Yes.</p> <p>19 Q. How did you communicate with Governor Perry's 20 staff?</p> <p>21 A. In person, at Committee hearings.</p> <p>22 Q. Did you have any written communications with 23 Governor Perry's staff?</p> <p>24 A. Not that I recall.</p> <p>25 Q. Did you have any e-mail?</p>	<p style="text-align: center;">84</p> <p>1 A. As to whether he can vote?</p> <p>2 BY MS. WESTFALL:</p> <p>3 Q. Whether he should exercise his discretion to vote 4 on anything?</p> <p>5 A. No.</p> <p>6 Q. Did you play any role in Mr. Dewhurst's committee 7 appointments when he made committee appointments?</p> <p>8 MR. SWEETEN: Objection. Vague and don't 9 reveal the substance of any particular communication.</p> <p>10 A. I think probably the chief of staff and policy 11 director would ask and if the rest of the staff had 12 recommendations about particular senators that would be 13 a particularly good fit for committees.</p> <p>14 Q. (By MS. WESTFALL) Did you provided input as part 15 of that process?</p> <p>16 A. Yes.</p> <p>17 Q. Did you provide input with regard to State 18 affairs?</p> <p>19 A. No.</p> <p>20 Q. Did you provide any input with regard to 21 Committee assignments in the House?</p> <p>22 A. No.</p> <p>23 Q. Did you advise the Lieutenant Governor on how to 24 assign bills to committees?</p> <p>25 MR. SWEETEN: Same instructions, don't</p>



<p style="text-align: center;">85</p> <p>1 reveal the substance of communications. Give a general 2 subject matter description. Go ahead.</p> <p>3 A. Generally, I think the only time that staff would 4 be asked is if it was a close call about, you know, the 5 subject of this bill could be State affairs or finance. 6 So sort of deciding which Committee is a better fit for 7 the substance of the bill.</p> <p>8 Q. (By MS. WESTFALL) Who in Mr. Dewhurst's office 9 advised him on committee assignments -- I mean, pardon 10 me, on assigning bills to committees?</p> <p>11 A. I think --</p> <p>12 MR. SWEETEN: Same objection and 13 instruction.</p> <p>14 A. I think Julia Rathgeber was primarily charged 15 with referring bills to committee. And then I'm sure 16 any number of senior staff would have had some input.</p> <p>17 Q. (By MS. WESTFALL) Did someone advise or are you 18 aware of any communications that Mr. Dewhurst had with 19 staff person concerning assigns SB 14 to the Committee 20 of the whole?</p> <p>21 MR. SWEETEN: I think she's asking you there 22 to reveal the substance of a communication.</p> <p>23 MS. WESTFALL: No. I'm asking about the 24 existence of a communication. We can read question 25 back, Mr. Sweeten.</p>	<p style="text-align: center;">87</p> <p>1 A. I don't know.</p> <p>2 Q. You just testified that you believe you are aware 3 of a communication concerning a referral of SB 14 to the 4 Committee of the whole, correct?</p> <p>5 A. I guess what I'm saying is a bill that was -- any 6 high profile bill there would have been some discussion 7 about in this case to go to the Committee of the whole. 8 I assume there would have been a discussion. I'm not 9 aware of any particular times or dates or parties to 10 that discussion.</p> <p>11 Q. And who do you think would know about the 12 existence of that communication?</p> <p>13 MR. SWEETEN: Objection, calls for 14 speculation. You can answer.</p> <p>15 A. I'm guessing the chief of staff and the policy 16 director.</p> <p>17 Q. (By MS. WESTFALL) Ms. Rathgeber and Mr. Brunson?</p> <p>18 A. Correct.</p> <p>19 Q. And Mr. Dewhurst himself, correct?</p> <p>20 A. Probably, yes.</p> <p>21 Q. And if Ms. Rathgeber and Mr. Brunson don't recall 22 this communication or discussion Mr. Dewhurst would be 23 the one to ask about it; is that right?</p> <p>24 MR. SWEETEN: Objection calls for 25 speculation, assumes facts not in evidence. You can</p>
<p style="text-align: center;">86</p> <p>1 MR. SWEETEN: Well, you're saying to advise 2 as to Senate Bill 14. I think there was even more in 3 there about the substance of the communication. Don't 4 reveal the substance of communication that you had as 5 that matter is legislatively privileged, part of the 6 deliberative process privilege and subject to the 7 attorney/client privilege. You can answer questions 8 about if you had a communication on a given date, the 9 means of the communication, who was present. That's 10 all.</p> <p>11 A. So the question is am I aware of whether or not 12 Governor Dewhurst communicated with staff prior to 13 referring the bill to the Committee of the whole.</p> <p>14 Q. (By MS. WESTFALL) Correct.</p> <p>15 A. I think, yes.</p> <p>16 Q. And did Ms. Rathgeber have any involvement in 17 those discussions? Was she -- strike that.</p> <p>18 Was she a party to the communications which you 19 just testified to?</p> <p>20 A. I don't know.</p> <p>21 Q. Was Mr. Brunson a party to the communication?</p> <p>22 A. I don't know.</p> <p>23 Q. Were you a party to the communication?</p> <p>24 A. No.</p> <p>25 Q. When did that communication take place?</p>	<p style="text-align: center;">88</p> <p>1 answer.</p> <p>2 A. That's who I would ask.</p> <p>3 Q. (By MS. WESTFALL) Do chairs of committees make 4 request to have bills sent to their committee?</p> <p>5 A. Yes.</p> <p>6 Q. How often does that happen?</p> <p>7 A. I don't know.</p> <p>8 Q. Do you know with regard to Senate Bill 14 whether 9 the chair of the State Affairs Committee ask that it be 10 referred to his committee?</p> <p>11 A. I don't know.</p> <p>12 Q. Do you play any role in assisting the Lieutenant 13 Governor in the appointment of conferees to conference 14 committee?</p> <p>15 A. Yes.</p> <p>16 Q. Did you play such a role with regard to Senate 17 Bill 14?</p> <p>18 MR. SWEETEN: Objection, that calls for 19 legislatively privileged information. Would ask him to 20 reveal thoughts, mental impressions, conversations and 21 furtherance of the legislative process regarding Senate 22 Bill 14. Don't answer.</p> <p>23 MS. WESTFALL: I don't think it does. I 24 want you to state on the record how this has anything to 25 do with the substance. This has to do with what role,</p>



<p style="text-align: center;">89</p> <p>1 who was playing with regard to certain legislative acts. 2 MR. SWEETEN: You asked the specific nature 3 -- in your question, you're asking about the subject 4 matter of the communication and it also presupposes that 5 that occurred. So I think you're beyond asking general 6 information about a communication. You're asking about 7 the specifics of the communication.</p> <p>8 MS. WESTFALL: Mr. Sweeten, it is a matter 9 of public record that conferees were appointed to the 10 conference committee with regard to SB 14, is it not? 11 I'm asking whether he played any role in that. I'm not 12 asking about any communications. I'm not asking what 13 the role was. I'm asking was he involved in that 14 decision. What is objectionable about those questions?</p> <p>15 MR. SWEETEN: Well, I mean, think you're 16 starting to seek -- you're drilling down into specific 17 mental impressions on how the bill took its course and 18 the involvement that his office had. And I think once 19 you're walking down that path, then you're starting to 20 get into matters that are matters of privilege. I think 21 the way it's phrased that it's objectionable.</p> <p>22 MS. WESTFALL: Just to be clear, you're 23 taking the position that the identify of staff people 24 involved in decisions, which is clearly a foundational 25 issue and not going to the communication itself, is</p>	<p style="text-align: center;">91</p> <p>1 we're not revealing the substance of the conversation. 2 What I think you're starting to ask him about specific 3 conversations. That's my point. So if you want to 4 rephrase -- if you could read the question back that 5 she's asked, we'll look at it in that light, but I want 6 to be clear on what I'm instructing him.</p> <p>7 BY MS. WESTFALL:</p> <p>8 Q. I'm going try it a different way.</p> <p>9 Were you a party to any communications concerning 10 Lieutenant Governor's appointment of conferees to the 11 conference committee to consider SB 14?</p> <p>12 MR. SWEETEN: I'm going to let you answer as 13 to that general subject matter and description. You can 14 answer that question.</p> <p>15 A. Yes.</p> <p>16 Q. (By MS. WESTFALL) Who else was involved in that 17 communication?</p> <p>18 A. Julia Rathgeber.</p> <p>19 Q. Was anyone else involved in that conversation?</p> <p>20 A. Not that I recall.</p> <p>21 Q. Were any staff people for legislators involved in 22 that conversation?</p> <p>23 A. Not that I recall.</p> <p>24 Q. Was that one conversation?</p> <p>25 A. Probably.</p>
<p style="text-align: center;">90</p> <p>1 privileged? Is that what you're asserting today?</p> <p>2 MR. SWEETEN: First of all, I'm not subject 3 to your examination, but let me tell you what I am 4 telling you.</p> <p>5 MS. WESTFALL: It's important to have this 6 on the record, Mr. Sweeten.</p> <p>7 MR. SWEETEN: It's fine. Let's have a clear 8 record. Let me say what I'm going to say. The court 9 has very clearly said that whether or not communications 10 occurred is a matter that you can ask him. The dates, 11 the means of communications, the parties involved, 12 that's all stuff that I'm going to let you ask him.</p> <p>13 When you start to get into -- and as a precursor to the 14 question, you start talking about the substance and you 15 presuppose what was discussed, then I think you're 16 starting to get into matters that are legislatively 17 privileged and are covered by that. So, I mean, I'm 18 happy to work with you if your question is, did he have 19 a communication? We'll let him answer that question.</p> <p>20 If you're asking about specific information that 21 occurred in the conversation, then I think we're getting 22 to a point where you are trying to discover his mental 23 impressions, thoughts, or impressions about pending 24 legislation. You even said Senate Bill 14. So I'm 25 going to let him, you know, answer to the extent that</p>	<p style="text-align: center;">92</p> <p>1 Q. Are you aware of any conversations that the 2 Lieutenant Governor had with anyone in the House 3 concerning the appointment of conferees --</p> <p>4 A. No.</p> <p>5 Q. -- to that Committee?</p> <p>6 Does the Lieutenant Governor engage in public 7 relations or media?</p> <p>8 MR. SWEETEN: Objection, vague. You can --</p> <p>9 Q. (By MS. WESTFALL) Press releases?</p> <p>10 A. Yes. He issued -- his staff issues press 11 release.</p> <p>12 Q. And who was the person who handled that with 13 regard to SB 14?</p> <p>14 A. I think Mike Walz.</p> <p>15 Q. Was there anyone else besides Mr. Walz?</p> <p>16 A. Not that I'm aware.</p> <p>17 Q. Does the Lieutenant Governor, as part of his 18 responsibilities, communicate with interest group 19 outside of the legislature?</p> <p>20 A. I think he address various groups and 21 conventions, yes.</p> <p>22 Q. And who is the staff person who organizes those 23 discussions?</p> <p>24 A. I don't know.</p> <p>25 Q. Are you aware of any such communications that he</p>



<p style="text-align: center;">93</p> <p>1 had with interest groups regarding photo ID?</p> <p>2 A. No.</p> <p>3 Q. Are you familiar with Section 5 of the Voting</p> <p>4 Rights Act?</p> <p>5 A. Yes.</p> <p>6 Q. What is your understanding of Section 5's</p> <p>7 requirements?</p> <p>8 A. Broadly that a certain class of states have to</p> <p>9 seek preclearance from the federal government before</p> <p>10 implementing changes to election laws.</p> <p>11 Q. Is there anything else you can just generally</p> <p>12 tell me about your understanding of Section 5 or is that</p> <p>13 it in terms -- from your legal perspective?</p> <p>14 A. More general than that?</p> <p>15 Q. Well, I mean --</p> <p>16 A. It largely applies to -- I mean, the most common</p> <p>17 examples would be redistricting and matters relating to</p> <p>18 eligibility for voting.</p> <p>19 Q. And Section 5, regardless of anyone's personal</p> <p>20 views of Section 5, it remains the law of the land,</p> <p>21 right?</p> <p>22 A. Yes.</p> <p>23 Q. And the Legislature must comply with all federal</p> <p>24 laws including Section 5, correct?</p> <p>25 MR. SWEETEN: Objection, you're asking for a</p>	<p style="text-align: center;">95</p> <p>1 A. The ones which I provided drafting assistance?</p> <p>2</p> <p>3 BY MS. WESTFALL:</p> <p>4 Q. Or had any general advisory assistance or bills</p> <p>5 that went through State affairs while you were employed</p> <p>6 with the Lieutenant Governor?</p> <p>7 A. There's just a very broad range. Everything in</p> <p>8 the election code so from polling place locations to</p> <p>9 cleanup and technical changes, to the code to make it</p> <p>10 easier to understand, voter ID obviously. Election</p> <p>11 dates, most recent -- I just passed a bill last session</p> <p>12 changing primary dates to comply with federal law. I</p> <p>13 think it was just a very broad spectrum.</p> <p>14 Q. What is your understanding of the scope of the</p> <p>15 applicability of Section 5 to the laws that you just</p> <p>16 described and listed? Does it cover some of those laws?</p> <p>17 All of those laws?</p> <p>18 MR. SWEETEN: Objection, compound.</p> <p>19 Objection vague. Objection calls for speculation.</p> <p>20 Objection asked for a legal opinion. You can answer to</p> <p>21 the extent you have and answer to that question.</p> <p>22 A. I think without having the election code in front</p> <p>23 of me, I would just say that some of the laws that went</p> <p>24 through State affairs were probably subject, if they</p> <p>25 passed, to Section 5 voting rights.</p>
<p style="text-align: center;">94</p> <p>1 legal opinion, legal inference. You can answer.</p> <p>2 MS. WESTFALL: He testified he has a law</p> <p>3 degree.</p> <p>4 A. I think, yes, is the answer.</p> <p>5 BY MS. WESTFALL:</p> <p>6 Q. And you drafted a lot of election laws while</p> <p>7 employed with the council and the Lieutenant Governor;</p> <p>8 is that right?</p> <p>9 A. I would not say I drafted a lot. I drafted some.</p> <p>10 Q. Were you only involved in the drafting of photo</p> <p>11 ID, in terms of election laws or others?</p> <p>12 A. Others.</p> <p>13 Q. Could you --</p> <p>14 A. Election laws bills went through the State</p> <p>15 Affairs Committee generally. And so I read and reviewed</p> <p>16 and waited on a dozen at least over the 5 years.</p> <p>17 Q. Could you generally provide me a sense of the</p> <p>18 categories of bills that you were involved in the</p> <p>19 drafting or consideration of that went through State</p> <p>20 affairs?</p> <p>21 MR. SWEETEN: While at Leg. Council or while</p> <p>22 at the Governor's office.</p> <p>23 MS. WESTFALL: While at the Governor's</p> <p>24 office.</p> <p>25 MR. SWEETEN: Lieutenant Governor's office.</p>	<p style="text-align: center;">96</p> <p>1 Q. (By MS. WESTFALL) Is it your understanding that</p> <p>2 Section 5 applies to a broader range of bills than</p> <p>3 redistricting?</p> <p>4 A. Yes.</p> <p>5 MR. SWEETEN: Same objection. Go ahead.</p> <p>6 A. Yes.</p> <p>7 Q. (By MS. WESTFALL) And with regard to the</p> <p>8 billings that are subject to Section 5, could you</p> <p>9 describe as a general matter steps that the Legislature</p> <p>10 takes during development, introduction or passage to</p> <p>11 increase the likelihood that the bill will be pre</p> <p>12 cleared under Section 5?</p> <p>13 MR. SWEETEN: I'm going to object based upon</p> <p>14 the legislative privilege. You're asking for specific</p> <p>15 thoughts, mental impressions, about pending legislation.</p> <p>16 And I think that those matters are potentially</p> <p>17 legislatively privileged because you're asking what they</p> <p>18 generally do.</p> <p>19 MS. WESTFALL: Are you instructing him not</p> <p>20 to answer, period.</p> <p>21 MR. SWEETEN: Well, I mean -- your</p> <p>22 question -- if you're asking what the legislator has</p> <p>23 done with respect to bills that impact the election</p> <p>24 code, then I think you're asking about specific bills</p> <p>25 that have been before the legislator -- legislature, so</p>



<p style="text-align: center;">97</p> <p>1 therefore I think those would be -- you're asking for 2 his thoughts and mental impressions about pending 3 legislation. Also the question is compound. So those 4 are my objections.</p> <p>5 BY MS. WESTFALL:</p> <p>6 Q. Can you answer my question, Mr. Hebert?</p> <p>7 A. So does the legislature take special steps in 8 bills that might be subject to Voting Rights Act.</p> <p>9 Q. As a general matter, not with regard to any 10 particular legislative act or bill?</p> <p>11 A. I guess, I would say any legislator who's 12 concerned about passage of their bill would take steps 13 that they and their staff thought necessary. And then 14 during the open testimony in any given committee you 15 would probably hear a lot of testimony about sides about 16 the relevance and applicability of the Voting Rights 17 Act.</p> <p>18 Q. And can you point to any particular steps that 19 might be taken to ensure that it would be pre cleared?</p> <p>20 A. They would probably consult council. They would 21 probably listen to public testimony. They would 22 probably confer with the Secretary of State's office.</p> <p>23 Q. And is --</p> <p>24 A. And the Attorney General's office.</p> <p>25 Q. And is it your experience that in order to ensure</p>	<p style="text-align: center;">99</p> <p>1 bill. Do not reveal mental impressions, thoughts, or 2 opinions as to specific legislation. Also, I'm going to 3 object compound, calls for speculation and vague. 4 A. So the question is, does the legislature consider 5 impact on minority voters during the past election laws?</p> <p>6 Q. (By MS. WESTFALL) In order to ensure that it 7 would be pre cleared through Section 5?</p> <p>8 A. I think the answer is probably, yes.</p> <p>9 Q. Can you think of any particular instances where 10 that was done?</p> <p>11 MR. SWEETEN: Don't reveal matters related 12 to specific legislation. Those are legislatively 13 privileged. To the extent you can answer, generally, 14 the question without revealing matters of legislative 15 privilege or deliberative process privilege or 16 communications impacting those, then you can do so.</p> <p>17 A. Any bills that affecting polling locations, 18 eligibility to vote would have undergone some of that 19 analysis.</p> <p>20 Q. (By MS. WESTFALL) Was such analysis, you know, 21 in your experience shepherding through, analyzing 22 reviewing, monitoring, election laws, was that type of 23 analysis usually done as a matter of course to ensure 24 preclearance for Section 5?</p> <p>25 MR. SWEETEN: Objection, multiple.</p>
<p style="text-align: center;">98</p> <p>1 that there would be no retrogressive adverse effect on 2 minority voters, that there would be any factual 3 analysis conducted of such a bill?</p> <p>4 MR. SWEETEN: Okay. My instruction to you 5 is don't reveal any matters related to a specific bill 6 including thoughts, mental impressions, or the process. 7 You can answer as a general matter her question 8 without -- but not as to a specific piece of 9 legislation.</p> <p>10 A. Yes. I think the legislature considers 11 surrounding facts when passes legislation.</p> <p>12 Q. (By MS. WESTFALL) And do they look into whether 13 an election law might have a retrogressive or adverse 14 impact on the minority voters?</p> <p>15 MR. SWEETEN: Objection to the form. 16 Objection compound. Objection calls for speculation. 17 You can answer as a general matter, but not as a 18 specific legislation.</p> <p>19 A. As a general matter they would consider all 20 surrounding facts when given specific legislation.</p> <p>21 Q. (By MS. WESTFALL) But listen carefully to my 22 question. My question is, whether they would analyze 23 the impact on minority voters. Can you answer that 24 question?</p> <p>25 MR. SWEETEN: Don't answer as to a specific</p>	<p style="text-align: center;">100</p> <p>1 Objection, calls for speculation. Objection, vague, and 2 objection to the extent you're seeking to find out 3 information about a specific piece of legislation. To 4 the extent that it does not do so or invade the 5 deliberative process or legislative process you can 6 answer the question.</p> <p>7 A. Could you repeat the question?</p> <p>8 Q. (By MS. WESTFALL) Certainly. As a matter of 9 course when election laws were considered being 10 developed, et cetera, would you -- actually strike that.</p> <p>11 Why don't you read back the question because now 12 I forgot my question.</p> <p>13 (Requested question was read.)</p> <p>14 MR. SWEETEN: Same objection and 15 instruction.</p> <p>16 A. I think yes.</p> <p>17 Q. (By MS. WESTFALL) And with regard -- with regard 18 to election bills, did you -- did the legislature 19 typically take steps to ensure that the law would not be 20 seen as having a discriminatory purpose, for the 21 purposes of ensuring preclearance under Section 5, of 22 the Voting Rights Act?</p> <p>23 MR. SWEETEN: Same objection and 24 instructions.</p> <p>25 A. I don't think any legislator -- I think every</p>



<p style="text-align: center;">101</p> <p>1 legislator would be concerned about clarifying that 2 there is no discriminatory purpose in the legislation. 3 Q. (By MS. WESTFALL) And would steps be taken to 4 ensure on the public record and otherwise there would be 5 a legitimate bona fide nondiscriminatory reason for 6 election bills?</p> <p>7 MR. SWEETEN: Same objection, same 8 instruction.</p> <p>9 A. I guess, I don't know. I mean, I assume every 10 piece of legislation has a purpose and that legislators 11 are not choosing a discriminatory purpose?</p> <p>12 Q. (By MS. WESTFALL) And is it your testimony that 13 they bear Section 5 in mind when they are enacting 14 election bills to ensure that there's no discriminatory 15 purpose?</p> <p>16 MR. SWEETEN: That calls for speculation. 17 And I'm also going to object to the extent she's asking 18 about any specific piece of legislation that you've had 19 experience with. You don't answer the question with 20 respect to specific legislation. To the extent you can 21 answer the question as a general matter without 22 discussing mental impressions or reveal any thought 23 processes regarding legislation, you can do that.</p> <p>24 A. I don't think I know the intent of legislators on 25 that.</p>	<p style="text-align: center;">103</p> <p>1 legislation. 2 Q. So is it your testimony that they're basically no 3 steps taken to ensure that election bills will be pre 4 cleared pursuant to Section 5?</p> <p>5 MR. SWEETEN: Objection compound. Objection 6 misstates facts and also I'm going to instruct don't 7 reveal specific matters related to specific legislation 8 in answering the question.</p> <p>9 A. That's not my testimony. My testimony is that a 10 legislator has their purpose for filing legislation. 11 They have a staff and the resources at the capital to 12 perfect that legislation. One of those resources is the 13 staff of the Lieutenant Governor.</p> <p>14 Q. Okay. Turning back to my question, I just want 15 to make sure that I clearly understand your testimony. 16 I'm asking about election bills which are subject to 17 Section 5 and then there's a universe of other bills 18 that are not subject to Section 5. Does the Lieutenant 19 Governor take any steps to ensure that election bills 20 that are subject to Section 5 will be pre cleared?</p> <p>21 MR. SWEETEN: Same objection, asked and 22 answered also.</p> <p>23 Q. (By MS. WESTFALL) Or no?</p> <p>24 A. I think the answer is, election bills that go 25 through State Affairs Committee or any other committee</p>
<p style="text-align: center;">102</p> <p>1 Q. (By MS. WESTFALL) Is there any particular role 2 that the Lieutenant Governor plays in ensuring the 3 likelihood that an election bill will be pre cleared 4 under Section 5?</p> <p>5 MR. SWEETEN: Same objection, same 6 instruction.</p> <p>7 A. I mean, on all legislation that passed through 8 the Senate, I think the Lieutenant Governor's staff was 9 available as a resource to any senator who wanted it.</p> <p>10 Q. (By MS. WESTFALL) I guess, my question is 11 whether the Lieutenant Governor plays any role in 12 ensuring that as election bills pass through the 13 legislator that they will be pre cleared under Section 14 5?</p> <p>15 MR. SWEETEN: Same objection, same 16 instruction.</p> <p>17 A. I don't think there's a formal role.</p> <p>18 Q. (By MS. WESTFALL) Is there an informal role?</p> <p>19 A. Again, his staff was available on this or any 20 other legislation to senators and staff who wanted 21 opinions.</p> <p>22 Q. Is that different from any other types of 23 legislation that is not election related? That is not 24 subject to Section 5?</p> <p>25 A. It's the same, I think, for all types of</p>	<p style="text-align: center;">104</p> <p>1 that might be subject to the Voting Rights Act. The 2 staff on those committees and the staff of the 3 Lieutenant Governor to the extent we recognize issues or 4 problems would raise those issues or problems.</p> <p>5 Q. What do you mean by issues and problems?</p> <p>6 A. If we fear that a bill might not pass 7 preclearance.</p> <p>8 Q. Then the staff would raise that with the members?</p> <p>9 I'm not sure I understand your testimony?</p> <p>10 MR. SWEETEN: Objection. I'm going to 11 object to the question. You're asking compound 12 questions about a review of the entire election code and 13 his experience with the election code. I think the way 14 the question is phrased is confusing. I also am 15 instructing him with respect to the legislative 16 privilege, don't reveal matters that relate to specific 17 pieces of legislation. With that instruction, you can 18 answer.</p> <p>19 A. I guess the way it would typically work. Let's 20 say, it's a bill changing up polling location. If I or 21 any other staffer recognize that that bill needed 22 amendments or changes or improvements to ensure its 23 compliance with federal law, the staff would probably 24 suggest that to the senator or their staff.</p> <p>25 Q. (By MS. WESTFALL) And are you aware of any</p>



<p style="text-align: center;">105</p> <p>1 communications between staff and a member or the 2 Lieutenant Governor or the Governor's office or the 3 Secretary of State, in which any staff person raised 4 concerns about SB 14 and its ability to be pre cleared 5 under Section 5 of the Voting Right Act?</p> <p>6 MR. SWEETEN: Objection. Don't answer the 7 question. It asks you to repeat communications that are 8 legislatively privileged. Also privileged by the 9 deliberative process privilege and potential 10 attorney/client privilege.</p> <p>11 Q. (By MS. WESTFALL) I'm asking you about the 12 existence of communications.</p> <p>13 MR. SWEETEN: You've asked more than that. 14 If you want to ask him about a specific communication 15 that's fine, but you've laced this question with 16 specific subject matter and that's why it's 17 objectionable. I'll work with you to try to, you know, 18 figure out how he can answer your question about the 19 general substance, but you've gone beyond that in your 20 question.</p> <p>21 Q. (By MS. WESTFALL) Can you answer my question?</p> <p>22 A. The question is were there communications that 23 I'm aware of related to --</p> <p>24 Q. Any concerns about SB 14 not being able to be pre 25 cleared under Section 5 of the Voting Rights Act?</p>	<p style="text-align: center;">107</p> <p>1 current system for determining how to verify the 2 identity of a voter at the polls on election day?</p> <p>3 A. I believe a voter can show up with a voter 4 registration card or some alternate forms of ID with 5 government issued paperwork with their name on it. So 6 an electric bill or something like that.</p> <p>7 Q. Turning back to the conversations you just 8 testified about, who was involved in these conversations 9 about -- not concerns, but it's not fears. You used 10 another word that SB 14?</p> <p>11 MR. ROSENBERG: Ability was the word.</p> <p>12 BY MS. WESTFALL:</p> <p>13 Q. Ability was the word. About the ability of SB 14 14 to be pre cleared under Section 5? It's a foundational 15 question.</p> <p>16 MR. SWEETEN: You can answer as to who was 17 involved in the conversation.</p> <p>18 MR. ROSENBERG: Conversations, I think was 19 his testimony.</p> <p>20 A. I would say probably staff from almost every 21 single office in the Senate.</p> <p>22 BY MS. WESTFALL:</p> <p>23 Q. Outside of?</p> <p>24 A. And then maybe even a couple House offices.</p> <p>25 Q. Outside of opponents of the bill, persons who</p>
<p style="text-align: center;">106</p> <p>1 MR. SWEETEN: Same objection, same 2 instruction.</p> <p>3 A. I guess I'm not -- I'm comfortable saying I'm 4 aware of communications regarding the ability of the 5 bill to be pre cleared or not. I'm not sure concerned 6 is the right word.</p> <p>7 Q. (By MS. WESTFALL) How many such conversations 8 are you aware of?</p> <p>9 A. I think the passage of any piece of legislation 10 is an ongoing deal from four session through three 11 session. So I can't give you a number of conversations 12 about the Voting Rights Act during the last session. It 13 would be lots probably.</p> <p>14 Q. Were you a party to such conversations?</p> <p>15 A. Yes.</p> <p>16 Q. Were these conversations that occurred before the 17 signing of the bill in May 2011?</p> <p>18 A. Yes.</p> <p>19 Q. Were any steps taken subsequent to those 20 conversations in the substance of the bill?</p> <p>21 MR. SWEETEN: Don't answer that question. 22 You don't have to answer that. That's legislatively 23 privileged. You're asking about mental impressions, 24 thoughts about pending legislation. Don't answer it.</p> <p>25 Q. (By MS. WESTFALL) Could you tell me Texas's</p>	<p style="text-align: center;">108</p> <p>1 voted against the bill, could you identify particular?</p> <p>2 A. So who -- in those who supported the legislation, 3 who in that group did I talk to about Voting Rights Act?</p> <p>4 Q. Correct. As it pertained to SB 14?</p> <p>5 A. I would probably need to see a list of senators, 6 but probably every single one. Them or their staff. I 7 mean, it could have ranged from, you know, indefinite 8 analysis to nothing.</p> <p>9 Q. Did you speak with anyone outside the Legislature 10 about similar concerns?</p> <p>11 A. Yes.</p> <p>12 Q. Could you tell me who those people were?</p> <p>13 A. It wasn't concerns. It was discussion of the 14 Voting Rights Act and its applicability to election 15 laws. I think, probably the people over the course of 16 the sessions that were involved in the public testimony.</p> <p>17 Q. Only the public testimony?</p> <p>18 A. I mean, aside from just -- yeah. Public 19 testimony. I mean.</p> <p>20 Q. Did you talk to anyone from the Governor's office 21 on this topic?</p> <p>22 A. As I mentioned earlier, I think I probably talked 23 with their staffer who was in charge of the State 24 Affairs Committee.</p> <p>25 Q. Mr. Scofield?</p>



<p>109</p> <p>1 A. I think that's probably right.</p> <p>2 Q. And you talked to him about the applicability or</p> <p>3 how it would all play out? SB 14 in the Section 5 of</p> <p>4 the Voting Rights Act?</p> <p>5 MR. SWEETEN: Objection. You're asking for</p> <p>6 more information about the thoughts, mental impressions</p> <p>7 about legislation Senate Bill 14 and I think you're</p> <p>8 moving into matters that are legislatively privileged.</p> <p>9 You can identify whether he had a conversation with</p> <p>10 whom, when, who was there, but we're not going to get</p> <p>11 into the specifics of the conversation.</p> <p>12 Q. (By MS. WESTFALL) Can you answer the question?</p> <p>13 A. I had limited interaction with the Governor's</p> <p>14 office.</p> <p>15 Q. Was there anyone in your office, in the</p> <p>16 Lieutenant Governor's office who had more extensive</p> <p>17 communications with the Governor's office about voter</p> <p>18 ID?</p> <p>19 A. I'm not aware.</p> <p>20 Q. Would it have been Mr. Brunson?</p> <p>21 MR. SWEETEN: Objection. You're --</p> <p>22 objection, vague. Objection assumes facts not in</p> <p>23 evidence. Objection calls for speculation. Go ahead</p> <p>24 and answer if you can.</p> <p>25 A. I don't know. I mean, I'm guessing the policy</p>	<p>111</p> <p>1 of your head?</p> <p>2 A. Again, I think it's government issued paperwork.</p> <p>3 So your electric bill, you're -- some other</p> <p>4 communications with the government.</p> <p>5 Q. And is it your impression that it's a number of</p> <p>6 forms of ID that would suffice; is that correct?</p> <p>7 A. Correct.</p> <p>8 Q. And if you don't have any of those IDs from that</p> <p>9 large range or a voter registration card, then what</p> <p>10 happens to a voter?</p> <p>11 A. Then you cast a provisional ballot.</p> <p>12 Q. And is that -- how is it determined whether that</p> <p>13 provisional ballot will be counted?</p> <p>14 A. I believe that the person has a certain period of</p> <p>15 time to return with sufficient ID to prove that they're</p> <p>16 an eligible voter.</p> <p>17 Q. Are you certain that's current law or is it</p> <p>18 simply that the county election official compares or</p> <p>19 verifies from the registration records that the voter is</p> <p>20 eligible and then counts the ballot. Do you believe</p> <p>21 it's that system?</p> <p>22 A. That might be correct.</p> <p>23 Q. Is the current system for identifying voters of</p> <p>24 the polls inadequate in any way?</p> <p>25 MR. SWEETEN: Objection. In answering this</p>
<p>110</p> <p>1 director and the chief of the staff are most likely.</p> <p>2 Q. (By MS. WESTFALL) Getting back to Texas's</p> <p>3 current system for determining how to verify the</p> <p>4 identify of voter, when someone registers to vote, the</p> <p>5 county election official mails the person a voter</p> <p>6 registration card; is that the current procedure?</p> <p>7 A. I believe yes.</p> <p>8 Q. Therefore, if you have that card in your</p> <p>9 possession and go to the polls on election day you get</p> <p>10 to vote a regular ballot?</p> <p>11 A. I believe that's right.</p> <p>12 Q. Do you know what happens if a voter lost her</p> <p>13 voter registration card or forgets to bring it to the</p> <p>14 polls on election day?</p> <p>15 A. I believe they can cast a provisional ballot.</p> <p>16 Q. Is it possible that if the voter has some sort of</p> <p>17 other form of ID that that would be a sufficient</p> <p>18 substitute under current?</p> <p>19 A. Yes. I'm sorry. Yes. Sorry. If they don't</p> <p>20 have their registration card. I thought you were asking</p> <p>21 if they didn't have any.</p> <p>22 Q. And are you aware of whether the other forms of</p> <p>23 currently supplemental ID include non photo ID?</p> <p>24 A. I believe they do.</p> <p>25 Q. Do you know what the forms of ID are off the top</p>	<p>112</p> <p>1 question, you're not -- under legislative privilege, you</p> <p>2 are not to reveal your thoughts, mental impressions,</p> <p>3 opinions about legislation or in furtherance of the</p> <p>4 legislation process including as to Senate Bill 14.</p> <p>5 Also, don't reveal communications you've had with any</p> <p>6 members of the staff, with any legislators in the</p> <p>7 furtherance of this specific bill.</p> <p>8 MS. WESTFALL: Mr. Sweeten, I'm asking his</p> <p>9 view as he sits here today. I'm not asking about any</p> <p>10 legislative act. I would ask that you withdraw that</p> <p>11 objection.</p> <p>12 MR. SWEETEN: To the extent that you can</p> <p>13 answer the question without revealing that information,</p> <p>14 I'm going to let you do so.</p> <p>15 A. So my question is, is the current system of</p> <p>16 identification sufficient?</p> <p>17 BY MS. WESTFALL:</p> <p>18 Q. Inadequate in any way?</p> <p>19 A. Is it inadequate in any way? I think given the</p> <p>20 amount of attention being paid to this, there's</p> <p>21 certainly people concerned about its efficiency.</p> <p>22 Q. I'm asking about your view as someone who's</p> <p>23 drafted a lot of elections bills, who's served for Leg.</p> <p>24 Council, who's served for the Lieutenant Governor, in</p> <p>25 your view is the current system inadequate?</p>



<p>113</p> <p>1 MR. SWEETEN: In answering this question, 2 don't reveal your thoughts, mental impressions, or 3 analysis regarding specifically Senate Bill 14. You can 4 answer as you're sitting here today as long as your 5 answer does not reveal those communications.</p> <p>6 A. I think it's inadequate to the extent it's 7 subject to fraud.</p> <p>8 Q. (By MS. WESTFALL) What is your basis for that 9 opinion?</p> <p>10 MR. SWEETEN: Do not reveal matters that you 11 learned with respect to -- that are covered by the 12 legislative privilege, the deliberative process 13 privilege or attorney/client privilege in answering that 14 question.</p> <p>15 A. I think like any system, any system is 16 susceptible to fraud. So why do I think the election 17 system is potentially susceptible, because it's a system 18 made up of human beings.</p> <p>19 Q. (By MS. WESTFALL) So is it your testimony that 20 it is the potential for fraud that makes it inadequate?</p> <p>21 MR. SWEETEN: Same objection and 22 instruction. Don't reveal your past mental impressions 23 or considerations regarding the bill. To the extent you 24 can answer without do so, you can.</p> <p>25 A. I think that's -- the potential is certainly part</p>	<p>115</p> <p>1 MR. SWEETEN: Objection. Voter ID laws, you 2 haven't defined what that is.</p> <p>3 MS. WESTFALL: Actually I have.</p> <p>4 MR. SWEETEN: Tell me what it is.</p> <p>5 MS. WESTFALL: I had an instruction in the 6 beginning.</p> <p>7 MR. SWEETEN: Well, let's talk about what 8 that is then because I'm not sure if you're talking 9 about a specific Senate Bill, another iterations of 10 legislation. He's not going discuss his thoughts, 11 mental impressions about a specific bill. You're asking 12 him as he sits here and these are matters that don't 13 invade his thought process or that are matters of the 14 deliberative process or attorney/client communications 15 that I'm going to let him answer as he's sitting here. 16 But also objection, vague as to the question.</p> <p>17 A. So what was the question?</p> <p>18 Q. (By MS. WESTFALL) When did you first hear any 19 support for enacting photo ID requirement in Texas?</p> <p>20 MR. SWEETEN: Don't reveal matters of 21 legislative privilege. You can answer.</p> <p>22 A. I don't recall.</p> <p>23 Q. (By MS. WESTFALL) Was it 2005?</p> <p>24 A. It's possible. It may have been before that.</p> <p>25 Q. Was it prompted by Indiana's enactment of photo</p>
<p>114</p> <p>1 of it. And then there are cases of election fraud in 2 Texas in the past.</p> <p>3 Q. (By MS. WESTFALL) And to be clear, the current 4 system for voting -- for identifying voters at the 5 polls, we're only talking about fraud as it pertains to 6 in voter impersonation; is that correct?</p> <p>7 A. Repeat the question.</p> <p>8 Q. I'm sorry. Let me withdraw that question and ask 9 another one.</p> <p>10 The only voter fraud that is potentially at issue 11 when we're talking about voters appearing at the polls 12 on election days, in person voter impersonation; is that 13 correct?</p> <p>14 MR. SWEETEN: Objection, vague. Also 15 objection, don't reveal any matters that were subject to 16 the legislative privilege that I've outlined before or 17 the deliberative process privilege or the 18 attorney/client communication.</p> <p>19 A. I suppose there are other types of fraud you 20 could commit regarding the electronic storage of the 21 votes or on election day I would say the in-person fraud 22 is probably the biggest threat.</p> <p>23 Q. (By MS. WESTFALL) And certainly photo ID laws 24 would address only in-person voter impersonation, 25 correct?</p>	<p>116</p> <p>1 ID law in that State?</p> <p>2 MR. SWEETEN: Objection. You're asking for 3 him to reveal his thoughts and mental impressions, 4 opinions about specific legislation. If you are asking 5 him about that, then don't do that.</p> <p>6 MS. WESTFALL: I'm asking him about Indiana 7 photo ID. That's not anything that could be covered by 8 legislative privilege in this case, Mr. Sweeten.</p> <p>9 MR. SWEETEN: I'm not even clear on what 10 your question is. Did he first hear of the Indiana 11 bill, is that the same time that he heard something -- 12 he's already testified that he didn't know about when he 13 heard it. It doesn't make sense. So objection, vague. 14 Objection, calls for speculation. Go ahead and ask your 15 question again.</p> <p>16 BY MS. WESTFALL:</p> <p>17 Q. Do you know why there was support for photo ID in 18 Texas?</p> <p>19 MR. SWEETEN: Objection, calls for 20 speculation. Do not reveal your thoughts, mental 21 impressions or opinions about legislation in furtherance 22 of the legislative process including any specific bill 23 in answering this question. Do not reveal 24 attorney/client communications that you've had with 25 anybody at the Lieutenant Governor's office and do not</p>



<p style="text-align: center;">117</p> <p>1 reveal matters that are subject to the deliberative 2 process privilege. If you can answer that question 3 without doing so, you can do so.</p> <p>4 A. I imagine different people have different 5 motivations for supporting that law.</p> <p>6 Q. (By MS. WESTFALL) Okay. Well that doesn't 7 really answer my question, but we'll move on.</p> <p>8 MR. SWEETEN: Objection to the side bar.</p> <p>9 Argumentative.</p> <p>10 Q. (By MS. WESTFALL) Could you mark this as US 44? 11 You've been handed what's been -- oh. You know my 12 apologies. We need to remark this exhibit. Could you 13 give that back to the court reporter. We previously 14 used this exhibit. Could you mark it as US 44? 15 (Exhibit No. 44 was marked.)</p> <p>16 Q. (By MS. WESTFALL) My apologies. You've been 17 handed what's been previously marked as US 44. Do you 18 recognize this?</p> <p>19 A. I don't think so. It's a voter ID bill. I don't 20 know what session it's from.</p> <p>21 Q. Have you seen this before?</p> <p>22 A. I may have. I don't know what session it's from.</p> <p>23 Q. Okay. Turning your attention to the last page, 24 Page 10 of Exhibit 44. It list the proposed effective 25 date, do you see that?</p>	<p style="text-align: center;">119</p> <p>1 allowable ID under SB 14?</p> <p>2 A. Yes.</p> <p>3 Q. Do you know them off the top of your head?</p> <p>4 A. It is several forms of government issued ID: 5 Driver's license, military ID, concealed handgun 6 license, immigration status papers that include photo 7 ID. I think there was one or two more.</p> <p>8 Q. And you've had a chance to review the forms of 9 allowable ID under House Bill 1706?</p> <p>10 A. Yes.</p> <p>11 Q. Could you compare those list and tell me what's 12 included in HB 1706 that was not included in Senate Bill 13 14?</p> <p>14 MR. SWEETEN: You can answer as to a factual 15 matter. I don't want you to give the basis for or I 16 don't want you to provide mental impressions regarding 17 the differences between these other than what's revealed 18 on the bill itself.</p> <p>19 A. All right. Looks like HB 1706 includes employee 20 ID cards, student ID cards, and county issued ID cards 21 in addition to the ones I stated earlier.</p> <p>22 Q. (By MS. WESTFALL) And also does it not include 23 non photo ID?</p> <p>24 A. Yes. Section B. Yes.</p> <p>25 Q. I'm sure you're better at reading these bills</p>
<p style="text-align: center;">118</p> <p>1 A. Uh-huh.</p> <p>2 Q. Does that refresh your recollection as to what 3 session this was introduced in?</p> <p>4 A. Yes.</p> <p>5 Q. And what session was that?</p> <p>6 A. That would have been the 2005 session probably.</p> <p>7 Q. Okay. And do you see who was sponsoring this 8 bill? Or authoring this bill, pardon me?</p> <p>9 A. Yes.</p> <p>10 Q. Who was that?</p> <p>11 A. Representatives Denny, Pitts, Bohac and probably 12 a lot more.</p> <p>13 Q. Have you read this bill before sitting here 14 today?</p> <p>15 A. I probably reviewed it. I'm not sure when or how 16 many times.</p> <p>17 Q. Could you just take a look at US 44 and let me 18 know when you've had a chance to review it? In 19 particular, I would direct you to Page 4, at section 20 63.0101.</p> <p>21 A. Okay.</p> <p>22 Q. Just let me know when you've had chance to look 23 at those pages in that section.</p> <p>24 A. Okay.</p> <p>25 Q. Okay. So are you familiar with the forms of</p>	<p style="text-align: center;">120</p> <p>1 than I am.</p> <p>2 A. I used to write a lot of them. Yes. One off the 3 first list or two off of the second, I think.</p> <p>4 Q. Turning your attention back to the photo ID's, do 5 you see that the driver's license allowable in the HB 6 1706 allowed for driver's license that had expired no 7 earlier than 2 years before the date of presentation?</p> <p>8 A. Yes.</p> <p>9 Q. Do you know why that time period was selected for 10 HB 1706?</p> <p>11 MR. SWEETEN: Don't answer the question. 12 Legislative privilege. Objection.</p> <p>13 Q. (By MS. WESTFALL) Are you following your 14 counsel's advice?</p> <p>15 A. Yes.</p> <p>16 Q. Do you see it list military ID cards at Section 17 2 --</p> <p>18 A. Yes.</p> <p>19 Q. -- under A? Can you describe the different types 20 of cards that that form of ID would encompass?</p> <p>21 MR. SWEETEN: You can answer.</p> <p>22 A. I assume any of the branches of the United States 23 military that issues a photo ID would follow that 24 description.</p> <p>25 Q. Do you know how many forms of different ID's that</p>



<p>121</p> <p>1 would be?</p> <p>2 A. I don't have that number now.</p> <p>3 Q. Would it be more than a dozen, fewer than a</p> <p>4 dozen?</p> <p>5 A. I don't know.</p> <p>6 Q. As to any of the forms of ID listed in BB 1706,</p> <p>7 do you know the intent of the bill's authors including</p> <p>8 that form of ID in HB 1706?</p> <p>9 MR. SWEETEN: Objection. You're asking for</p> <p>10 matters that are subject to the legislative privilege.</p> <p>11 MS. WESTFALL: I'm asking about the purpose</p> <p>12 and intent which is permissible.</p> <p>13 MR. SWEETEN: He can provide what he</p> <p>14 believes is the legislative purpose of a bill.</p> <p>15 MS. WESTFALL: And you're not allowing him</p> <p>16 to answer the legislative purpose of why a particular ID</p> <p>17 was listed in a particular bill? Is that your</p> <p>18 instruction to your client?</p> <p>19 MR. SWEETEN: What I'm telling you is he can</p> <p>20 provide an answer as to the general purpose of the bill.</p> <p>21 He cannot provide, pursuant the court's order. He does</p> <p>22 not have to provide the subjective intent of any</p> <p>23 specific legislator with respect to that bill. So you</p> <p>24 can ask him about what the purpose of the bill is, he</p> <p>25 can answer that. Otherwise, it is subject to the</p>	<p>123</p> <p>1 speculation. Also don't reveal any specific</p> <p>2 communications you've had related to HB 1706.</p> <p>3 MS. WESTFALL: I said do you know. It's not</p> <p>4 calling for speculation. You may answer.</p> <p>5 A. I don't know.</p> <p>6 BY MS. WESTFALL:</p> <p>7 Q. Are you aware of any communications related to</p> <p>8 the drafting of the element of HB 1706 outside of the</p> <p>9 Lieutenant Governor's office?</p> <p>10 A. No.</p> <p>11 Q. Are you aware of the source of legislative</p> <p>12 language of HB 1706?</p> <p>13 MR. SWEETEN: Don't reveal specific mental</p> <p>14 impressions, thoughts about specific legislation</p> <p>15 including the process by which the legislation came</p> <p>16 through. So I'm going to instruct you not to answer, if</p> <p>17 your answer would reveal that.</p> <p>18 A. I don't know.</p> <p>19 Q. (By MS. WESTFALL) Do you know anyone in the</p> <p>20 Lieutenant Governor's office who would have knowledge or</p> <p>21 testimony about the purpose of HB 1706?</p> <p>22 MR. SWEETEN: Objection, asked and answered.</p> <p>23 A. No.</p> <p>24 Q. (By MS. WESTFALL) Would the Lieutenant Governor</p> <p>25 himself know the purpose of HB 1706?</p>
<p>122</p> <p>1 legislative privilege.</p> <p>2 MS. WESTFALL: To be clear, you're not</p> <p>3 allowing him to answer any questions about the purpose</p> <p>4 of individual ID's included in this bill; is that right?</p> <p>5 MR. SWEETEN: I will let him testify as to</p> <p>6 what his understanding of the legislative purpose of a</p> <p>7 specific bill is.</p> <p>8 MS. WESTFALL: The overall bill; is that</p> <p>9 right, because I'll change the question. I just want to</p> <p>10 be clear of your objection.</p> <p>11 MR. SWEETEN: Yeah. I think that's what the</p> <p>12 court has said is you can ask as to the legislative</p> <p>13 purpose of a bill.</p> <p>14 BY MS. WESTFALL:</p> <p>15 Q. What is your understanding of the legislative</p> <p>16 purpose of HB 1706?</p> <p>17 A. I was not in Lieutenant Governor's office at the</p> <p>18 time, but my guess is they wanted to --</p> <p>19 MR. SWEETEN: Don't guess. Just answer the</p> <p>20 question she's posed.</p> <p>21 A. I don't know the purpose is the answer.</p> <p>22 Q. (By MS. WESTFALL) Do you know whether anyone in</p> <p>23 the Lieutenant Governor's office was involved in the</p> <p>24 development of drafting of HB 1706?</p> <p>25 MR. SWEETEN: Objection, calls for</p>	<p>124</p> <p>1 MR. SWEETEN: Objection, asked and answered.</p> <p>2 A. I don't know.</p> <p>3 Q. (By MS. WESTFALL) Are you aware of the source of</p> <p>4 any of the legislative language of HB 1706?</p> <p>5 MR. SWEETEN: Objection, asked and answered</p> <p>6 also.</p> <p>7 A. No.</p> <p>8 Q. (By MS. WESTFALL) Are you familiar with the</p> <p>9 Indiana photo ID law?</p> <p>10 MR. SWEETEN: You can answer that question.</p> <p>11 A. Yes.</p> <p>12 Q. (By MS. WESTFALL) Did you review that law?</p> <p>13 A. Yes.</p> <p>14 Q. When did you review that law?</p> <p>15 MR. SWEETEN: Don't reveal your mental</p> <p>16 thoughts and impressions about specific pending</p> <p>17 legislation, okay? In answering this question,</p> <p>18 A. I think I probably would have reviewed it</p> <p>19 certainly in '07 when I started with the Lieutenant</p> <p>20 Governor.</p> <p>21 Q. (By MS. WESTFALL) Would you describe the Indiana</p> <p>22 ID photo law as similar or dissimilar to HB 1706?</p> <p>23 MR. SWEETEN: Don't answer that. It</p> <p>24 requires you to reveal mental thoughts -- mental</p> <p>25 impression, thoughts, opinions about specific</p>



<p>125</p> <p>1 legislation. Don't answer it.</p> <p>2 Q. (By MS. WESTFALL) Based on the face of the</p> <p>3 statutes, the Indiana photo ID law and HB 1706, and</p> <p>4 based on your knowledge as a lawyer and with your</p> <p>5 experience in election law, would you describe those --</p> <p>6 that bill and the Indiana law as similar or dissimilar?</p> <p>7 MR. SWEETEN: Objection, ask for a legal</p> <p>8 conclusion. Objection, also you can -- I'll let you</p> <p>9 answer, but don't reveal any thoughts, mental</p> <p>10 impressions about any pending legislation. She's asked</p> <p>11 you on the face of it and you can answer. Go ahead.</p> <p>12 A. On the face of this bill and what I remember of</p> <p>13 the Indiana law, they're similar.</p> <p>14 Q. (By MS. WESTFALL) Can you describe, generally,</p> <p>15 the legislator's consideration of HB 1706 after it was</p> <p>16 filed?</p> <p>17 MR. SWEETEN: Objection. Don't answer</p> <p>18 except as to the matter it's public record. Don't</p> <p>19 reveal thoughts or mental impressions about the</p> <p>20 legislation, the process by which it went through. You</p> <p>21 can answer as to public record.</p> <p>22 A. I don't remember.</p> <p>23 Q. (By MS. WESTFALL) After the House -- did the</p> <p>24 House pass HB 1706?</p> <p>25 A. I don't remember.</p>	<p>127</p> <p>1 matters of public record.</p> <p>2 A. I don't know. It didn't pass. But it was also</p> <p>3 May.</p> <p>4 Q. (By MS. WESTFALL) In other words, it was late in</p> <p>5 the session?</p> <p>6 A. Correct.</p> <p>7 Q. Why was it referred to the State Affairs</p> <p>8 Committee and not the Committee of the whole?</p> <p>9 MR. SWEETEN: Don't answer that. Ask for</p> <p>10 matters that are subject to legislative privilege.</p> <p>11 A. I don't know.</p> <p>12 Q. (By MS. WESTFALL) Are you following the advice</p> <p>13 of your council?</p> <p>14 MR. SWEETEN: I'm instructing you not to</p> <p>15 answer that question. It asks for matters of</p> <p>16 legislative privilege.</p> <p>17 A. Yes.</p> <p>18 Q. (By MS. WESTFALL) Do you know whether the</p> <p>19 Lieutenant Governor took a public position on HB 1706?</p> <p>20 A. I don't remember.</p> <p>21 Q. Did you say you didn't remember?</p> <p>22 A. I don't remember if he did or did not.</p> <p>23 Q. Do you notice whether the Lieutenant Governor or</p> <p>24 anyone in his office had any communications with anyone</p> <p>25 about HB 1706?</p>
<p>126</p> <p>1 Q. Could you mark this as US 74?</p> <p>2 (Exhibit No. 74 was marked.)</p> <p>3 Q. (By MS. WESTFALL) I'm handing you what's been</p> <p>4 marked as US 74. Do you recognize this document?</p> <p>5 MR. SWEETEN: Caution the witness to review</p> <p>6 the document before answering questions about it.</p> <p>7 A. Looks like a legislative history of HB 1706.</p> <p>8 Q. (By MS. WESTFALL) Could you take a moment to</p> <p>9 review this and let me know when you've had a chance to</p> <p>10 look at it?</p> <p>11 A. Okay.</p> <p>12 Q. Does this document refresh your recollection as</p> <p>13 to whether the House passed HB 1706?</p> <p>14 A. It looks like it passed.</p> <p>15 Q. And when it went to the senate, what committee</p> <p>16 was it referred to?</p> <p>17 A. Looks like it was referred to State Affairs.</p> <p>18 Q. Would that have been the ordinary jurisdiction --</p> <p>19 committee that would have jurisdiction over election</p> <p>20 laws in the Senate?</p> <p>21 A. It's fair to say that those election laws goes to</p> <p>22 State Affairs Committee.</p> <p>23 Q. What happened to HB 1706 after it was referred to</p> <p>24 the State Affairs Committee?</p> <p>25 MR. SWEETEN: You can answer as to the</p>	<p>128</p> <p>1 MR. SWEETEN: You can testify as to whether</p> <p>2 or not you know of any communications.</p> <p>3 A. I don't know of any.</p> <p>4 Q. (By MS. WESTFALL) Are you aware of any analysis</p> <p>5 conducted by the Lieutenant Governor's office prior</p> <p>6 to -- actually, strike that.</p> <p>7 Are you aware of any analysis conducted by the</p> <p>8 Lieutenant Governor's office related to HB 1706?</p> <p>9 MR. SWEETEN: Don't answer that. It asks</p> <p>10 for matters that are subject to legislative privilege,</p> <p>11 the deliberative process privilege, and the</p> <p>12 attorney/client privilege.</p> <p>13 Q. (By MS. WESTFALL) Are you following the advice</p> <p>14 of your counsel?</p> <p>15 A. Yes.</p> <p>16 Q. Are you aware of any attempt to determine who</p> <p>17 among registered voters did not possess the forms of ID</p> <p>18 required or allowed by HB 1706?</p> <p>19 MR. SWEETEN: Objection, calls for matters</p> <p>20 that are legislatively privileged. Instruct not to</p> <p>21 answer.</p> <p>22 Q. (By MS. WESTFALL) Are you following your</p> <p>23 counsel's advice?</p> <p>24 A. I am.</p> <p>25 Q. Sitting here today, what is your opinion of HB</p>



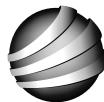
<p style="text-align: center;">129</p> <p>1 1706?</p> <p>2 MR. SWEETEN: Don't answer to the extent</p> <p>3 that that question ask you to reveal your mental</p> <p>4 thoughts, impressions, about the legislation. So don't</p> <p>5 provide that if it does that.</p> <p>6 A. Seems like an attempt to ensure the integrity of</p> <p>7 the elections.</p> <p>8 Q. (By MS. WESTFALL) I'm sorry?</p> <p>9 A. Seems like an attempt to ensure the integrity of</p> <p>10 the elections and require photo ID.</p> <p>11 Q. Had this bill, HB 1706, been elected into law,</p> <p>12 would it have accomplished that purpose in your view?</p> <p>13 MR. SWEETEN: Objection. She's asking for</p> <p>14 matters that are subject to the legislative privileges,</p> <p>15 instruct not to answer.</p> <p>16 Q. (By MS. WESTFALL) Are you following the advice</p> <p>17 of your counsel?</p> <p>18 A. I am.</p> <p>19 Q. Was there a photo ID bill introduced in the next</p> <p>20 legislative session in 2007?</p> <p>21 A. I believe there was.</p> <p>22 Q. Do you remember that bill number?</p> <p>23 A. I don't. A lot of bill numbers.</p> <p>24 Q. Could you mark this as US 28?</p> <p>25 (Exhibit No. 28 was marked.)</p>	<p style="text-align: center;">131</p> <p>1 Q. Okay. Sir, I would like you to limit your</p> <p>2 discussion of the differences to the forms of allowable</p> <p>3 ID at section 63.0101 at Page 9. So you need not</p> <p>4 compare the whole bill. But could you tell me the</p> <p>5 differences in allowable forms of ID between HB 1706 and</p> <p>6 HB 218?</p> <p>7 A. Looks like 218 requires a Texas license and any</p> <p>8 license from Texas or other states. Looks like 218 does</p> <p>9 not allow State agency ID cards or county issued ID</p> <p>10 cards. Oh, wait, take that back. It does. Generally</p> <p>11 similar.</p> <p>12 Q. So is it your testimony that HB 218 now limits it</p> <p>13 to Texas driver's licenses and eliminated the use of</p> <p>14 county issued forms of ID; is that correct?</p> <p>15 A. I think that's right.</p> <p>16 Q. Pardon me. County election office issued ID; is</p> <p>17 that correct?</p> <p>18 A. That's correct.</p> <p>19 Q. Otherwise, the forms of allowable ID are similar</p> <p>20 to HB 1706?</p> <p>21 A. I think that's right.</p> <p>22 Q. But is it fair to say that it's a narrowing of</p> <p>23 the allowable forms of ID; is that correct?</p> <p>24 A. Yes.</p> <p>25 Q. As to the photo ID; is that correct?</p>
<p style="text-align: center;">130</p> <p>1 Q. (By MS. WESTFALL) You've been handed what's been</p> <p>2 previously marked as US Exhibit 28. Do you recognize</p> <p>3 this document?</p> <p>4 A. It's a photo ID bill from the '07 session.</p> <p>5 Q. Who authored the bill?</p> <p>6 A. Representatives Brown, Berman, Bohac, Riddle and</p> <p>7 others.</p> <p>8 Q. Are you familiar with the provisions of HB 218?</p> <p>9 A. Yeah.</p> <p>10 Q. Could you compare HB 218 with HB 1706 and tell me</p> <p>11 if there are any major difference that strike you?</p> <p>12 MR. SWEETEN: In answering the question, I</p> <p>13 don't want you to reveal any thoughts, mental</p> <p>14 impressions or opinions about those two bills or</p> <p>15 legislation that occurred -- that you would have</p> <p>16 developed in the furtherance of the legislative process.</p> <p>17 She's asking you to compare the text of two bills right</p> <p>18 now. I'm not objecting to that specific question.</p> <p>19 Q. (By MS. WESTFALL) Thank you.</p> <p>20 A. Looks like the HB 218 has some exceptions for --</p> <p>21 or a place for military and military widows or widowers</p> <p>22 to indicate they are that status on their registration</p> <p>23 form. And for the registration form to include a notice</p> <p>24 on there whether or not it is a disabled veteran or</p> <p>25 military widow or widower.</p>	<p style="text-align: center;">132</p> <p>1 A. Correct.</p> <p>2 Q. And HB 218 as with HB 1706 still allows the use</p> <p>3 of non photo ID; is that correct?</p> <p>4 A. Correct.</p> <p>5 Q. And turning your attention to the forms of</p> <p>6 allowable photo ID, is it your view that student IDs</p> <p>7 issued by a state institution are still permissible</p> <p>8 forms of photo ID under HB 218, though they're not</p> <p>9 expressly identified as such?</p> <p>10 A. Well, in 218 --</p> <p>11 Q. 218.</p> <p>12 A. In par in six says, a student ID card that</p> <p>13 contains their photograph is acceptable.</p> <p>14 Q. Thank you. Did you or anyone in the Lieutenant</p> <p>15 Governor's office play any role in the development of</p> <p>16 218?</p> <p>17 MR. SWEETEN: Objection. I don't want you</p> <p>18 to discuss any matters that are subject to the</p> <p>19 legislative privilege, which could include thoughts or</p> <p>20 mental impressions opinions about legislative or could</p> <p>21 also reveal communications of legislators, legislative</p> <p>22 staff, State agencies, Texas Legislative Council, those</p> <p>23 are all matters of legislative privilege so do not</p> <p>24 reveal any specifics with respect to that. They're</p> <p>25 privileged.</p>



<p style="text-align: center;">133</p> <p>1 A. The question is did Lieutenant Governor or staff 2 play a role in the development of HB 218?</p> <p>3 Q. (By MS. WESTFALL) Yes.</p> <p>4 MR. SWEETEN: I'm going to instruct you not 5 to answer if it would reveal matters that are subject to 6 the privilege.</p> <p>7 A. The answer is don't recall.</p> <p>8 Q. (By MS. WESTFALL) So you're not asserting 9 privilege with regard to that answer?</p> <p>10 A. Correct.</p> <p>11 Q. Were you present at any meetings during the 12 development or drafting of HB 218?</p> <p>13 MR. SWEETEN: Same objection, same 14 instruction.</p> <p>15 A. I don't recall.</p> <p>16 Q. (By MS. WESTFALL) Are you aware of who in 17 particular was involved in the drafting of HB 218?</p> <p>18 A. No.</p> <p>19 Q. Are you aware of any concerns raised during the 20 development, drafting or consideration of HB 218 about 21 the impact of the bill on Hispanic voters?</p> <p>22 MR. SWEETEN: That calls for matters that 23 are subject to the legislative privilege, the 24 deliberative process privilege, as well as potentially 25 attorney/client privileged information, so don't answer</p>	<p style="text-align: center;">135</p> <p>1 Q. (By MS. WESTFALL) Are you going to answer the 2 question or follow the advice of council?</p> <p>3 A. Follow the advice.</p> <p>4 Q. Did you learn or become aware of any concerns 5 raised about HB 218?</p> <p>6 MR. SWEETEN: Same objection, legislative 7 privilege, same instruction, don't answer the question.</p> <p>8 Q. (By MS. WESTFALL) Are you following advice of 9 council?</p> <p>10 A. I am.</p> <p>11 Q. If there's a bill in the House that gets passed 12 and then referred to the senate, how is it determined 13 who sponsors the House in the senate as a general 14 matter?</p> <p>15 MR. SWEETEN: I'm going to object to the 16 question. I think you're asking for matters that are 17 subject to the legislative privilege.</p> <p>18 MS. WESTFALL: You are not going to allow 19 him to answer generally?</p> <p>20 MR. SWEETEN: Let me hear the question 21 again. Madam, court reporter, will you please read it 22 back?</p> <p>23 (Requested question was read.)</p> <p>24 MR. SWEETEN: You can answer as a general 25 matter. Don't reveal matters subject to legislative</p>
<p style="text-align: center;">134</p> <p>1 the question.</p> <p>2 Q. (By MS. WESTFALL) Are you following advice of 3 counsel?</p> <p>4 A. I am.</p> <p>5 Q. Are you aware of any concerns raised during the 6 development or drafting of HB 218 about the impact of 7 bill on Black voter?</p> <p>8 MR. SWEETEN: Same objection, same 9 instruction.</p> <p>10 Q. (By MS. WESTFALL) Are you following the advice 11 of council?</p> <p>12 A. I am.</p> <p>13 Q. Are you aware of any analysis conducted to 14 determine the impact of HB 218 on racial or ethnic 15 minority voters?</p> <p>16 MR. SWEETEN: Objection, legislative 17 privilege. My instruction is to not answer the 18 question.</p> <p>19 Q. (By MS. WESTFALL) Are you following the advice 20 of council?</p> <p>21 A. I am.</p> <p>22 Q. Did you monitor consideration of HB 218 in the 23 House?</p> <p>24 MR. SWEETEN: Objection. I think that calls 25 for matters subject to the legislative privilege.</p>	<p style="text-align: center;">136</p> <p>1 privilege. So go ahead.</p> <p>2 A. I think generally there's communications between 3 House sponsors and senators, people who share priorities 4 sponsor each other's bills.</p> <p>5 Q. (By MS. WESTFALL) So generally speaking, is the 6 Lieutenant Governor not a party to those communications?</p> <p>7 MR. SWEETEN: Objection, I mean, that's 8 vague. It also ask about his particular role in 9 legislation. That is subject to the legislative 10 privilege.</p> <p>11 MS. WESTFALL: I'm not referring to any 12 particular legislative act. I'm asking about general 13 procedures. Will you let your witness answer that 14 question?</p> <p>15 MR. SWEETEN: You're asking about general -- 16 can you read the question back again.</p> <p>17 (Requested question was read.)</p> <p>18 BY MS. WESTFALL:</p> <p>19 Q. To those conversations, I think, about who 20 will -- who in the Senate will sponsor a House Bill?</p> <p>21 MR. SWEETEN: Objection to the question.</p> <p>22 Objection form, objection vague. Objection, it's 23 compound. You can answer as a general matter to that 24 question. Do not refer to any specific legislation in 25 answering that. In particular, Senate Bill 14 or these</p>



<p style="text-align: center;">137</p> <p>1 bills she's showing you. Okay.</p> <p>2 A. I think generally the Lieutenant Governor is not</p> <p>3 involved in who sponsors what.</p> <p>4 Q. (By MS. WESTFALL) Does he become involved if he</p> <p>5 has particular interest in a bill and who will be the</p> <p>6 senate sponsor of a House bill?</p> <p>7 MR. SWEETEN: Same objection, same</p> <p>8 instruction.</p> <p>9 A. I don't know.</p> <p>10 Q. (By MS. WESTFALL) So Janice McCoy has testified</p> <p>11 in this litigation. Did you review her transcript in</p> <p>12 advance of this deposition today?</p> <p>13 A. No.</p> <p>14 Q. So she testified that she had one or two dozen</p> <p>15 conversations with the Lieutenant Governor's office</p> <p>16 about HB 218, including the person who staffed State</p> <p>17 Affairs for the Lieutenant Governor. Was that you?</p> <p>18 MR. SWEETEN: Objection to the form of the</p> <p>19 question.</p> <p>20 A. In '07 --</p> <p>21 MR. SWEETEN: Objection, calls for facts not</p> <p>22 in evidence. Go ahead.</p> <p>23 A. -- probably yes. I should say there's several</p> <p>24 people that staff State affairs although my guess is I</p> <p>25 would have been one of those people.</p>	<p style="text-align: center;">139</p> <p>1 MR. SWEETEN: Don't reveal matters that are</p> <p>2 subject to communications that you've had with</p> <p>3 legislators or legislative staff. So if it would reveal</p> <p>4 a communication you had with his office or one of his</p> <p>5 staffers, don't reveal that information.</p> <p>6 A. I think I was aware when he filed it or shortly</p> <p>7 before, possibly, but I can't remember.</p> <p>8 MR. SWEETEN: You can testify as to matters</p> <p>9 of public record. We need a bathroom break.</p> <p>10 (Brief recess.)</p> <p>11 BY MS. WESTFALL:</p> <p>12 Q. We're back on the record. Before the break we</p> <p>13 were discussing HB 218 and talking about Janice McCoy's</p> <p>14 testimony about this bill, do you remember that?</p> <p>15 A. I do.</p> <p>16 Q. Ms. McCoy testified in her deposition in this</p> <p>17 case that she had never had any discussions with anyone</p> <p>18 in the Lieutenant Governor's office about the impact of</p> <p>19 HB 218 on minority voters. To your knowledge, is that</p> <p>20 accurate?</p> <p>21 MR. SWEETEN: Don't reveal in answering the</p> <p>22 question legislative privilege would cover</p> <p>23 communications that you've had with legislative staff,</p> <p>24 don't reveal any substance of any communications that</p> <p>25 you've had with staff as that is a matter covered by</p>
<p style="text-align: center;">138</p> <p>1 Q. (By MS. WESTFALL) Who were the other people in</p> <p>2 2007 that were staffing State affairs besides you?</p> <p>3 A. State affairs is a large-- insurance bills would</p> <p>4 have been Karen Barret and health related bills would</p> <p>5 have been Jamie Dudensten. And my memory is during this</p> <p>6 session, myself and general counsel Frank Battle</p> <p>7 probably would have split the elections bills. There</p> <p>8 may have been others.</p> <p>9 Q. And Ms. McCoy and Senator Fraser when they</p> <p>10 testified in this matter also testified that they met</p> <p>11 with the Lieutenant Governor's office and indicated that</p> <p>12 Senator Fraser wanted to sponsor HB 218. Is that your</p> <p>13 recollection as well?</p> <p>14 MR. SWEETEN: Objection, assumes facts not</p> <p>15 in evidence. You can answer to the extent you know.</p> <p>16 A. I don't know. I don't remember.</p> <p>17 Q. (By MS. WESTFALL) Are you aware of any meeting</p> <p>18 that occurred between Senator Fraser or Janice McCoy or</p> <p>19 with the Lieutenant Governor concerning sponsorship of</p> <p>20 HB 218 in the Senate?</p> <p>21 A. I don't recall.</p> <p>22 Q. You don't recall?</p> <p>23 A. I don't recall a meeting.</p> <p>24 Q. Were you aware of Senator Fraser's interest in</p> <p>25 sponsoring HB 218 in the Senate?</p>	<p style="text-align: center;">140</p> <p>1 legislative privilege.</p> <p>2 Q. (By MS. WESTFALL) Can you answer the question?</p> <p>3 MR. SWEETEN: You can testify if you had a</p> <p>4 conversation with Janice McCoy. Don't testify about the</p> <p>5 substance of it. The way it's currently phrased,</p> <p>6 they're asking you the substance of the conversation.</p> <p>7 Therefore, I'm instructing you not to answer it as</p> <p>8 phrased.</p> <p>9 Q. (By MS. WESTFALL) Are you following your</p> <p>10 counsel's advice?</p> <p>11 A. Yes.</p> <p>12 Q. Are you aware of any discussions that occurred</p> <p>13 about the impact of HB 218 on minority voters?</p> <p>14 MR. SWEETEN: Again, in the question she's</p> <p>15 asking you the substance of the conversations. The</p> <p>16 question is problematic from that standpoint. I'll</p> <p>17 allow you to answer as to any conversations you've had,</p> <p>18 who those conversations were with, including whether you</p> <p>19 had a discussion with Janice McCoy. However, as the</p> <p>20 question is phrased, I believe the question is calling</p> <p>21 for you to reveal the substance of communications and</p> <p>22 therefore I'm instructing you not to answer the</p> <p>23 question.</p> <p>24 Q. (By MS. WESTFALL) Are you following your</p> <p>25 counsel's advice?</p>



<p>141</p> <p>1 A. Yes. 2 Q. The question was not about -- just to clarify, 3 for the witness, the question was not about 4 conversations with Janice McCoy. Are you aware of any 5 discussions about the impact of HB 218 on minority 6 voters? 7 MR. SWEETEN: You can reveal if you're aware 8 of any specific discussions regarding that subject 9 matter, but do not reveal anything beyond that. 10 A. I don't recall. 11 Q. (By MS. WESTFALL) Are you aware of any 12 communications with election officials concerning HB 13 218? 14 MR. SWEETEN: You can answer as phrased. 15 A. I don't recall. 16 Q. (By MS. WESTFALL) Are you aware of a statement 17 by Secretary of State, Roger Williams, that he wasn't 18 sure if a photo ID bill would improve turn out? 19 MR. SWEETEN: You can answer, if you are 20 aware. 21 A. I don't recall that statement. 22 Q. (By MS. WESTFALL) Do you know the party 23 affiliation of Secretary Williams? 24 A. I believe he's Republican. 25 THE REPORTER: Can you speak up.</p>	<p>143</p> <p>1 Don't answer if it would reveal that information. 2 A. Just seems a natural purpose to file this sort of 3 legislation. 4 Q. (By MS. WESTFALL) You mean, to your mind -- in 5 your mind HB 218 would improve the integrity of the 6 election process? Is that your testimony? 7 A. That wasn't your question, I don't think. I 8 thought your question was, why do I think they did it. 9 I don't know why they did it. My guess is because it 10 would improve integrity of the elections. 11 Q. And then what is basis of your supposition that 12 that was the purpose in introducing HB 218? 13 MR. SWEETEN: In answering that question 14 don't reveal conversations you had that would be subject 15 to the legislative privilege or thoughts, mental 16 impressions about that specific legislation. If you can 17 answer without doing so, you can do so. 18 A. I mean, there's been lots of election bills and 19 voter ID bills filed. And I would say it's fair to say 20 that in those cases for those similar bills that was the 21 purpose. 22 Q. (By MS. WESTFALL) Were there any other purposes 23 that you're aware of underlying the filing of HB 218? 24 A. I'm not aware. 25 Q. Are you aware of any evidence that there was a</p>
<p>142</p> <p>1 A. I believe he's Republican. 2 Q. (By MS. WESTFALL) What were the purposes of the 3 bills authors in introducing HB 218? 4 MR. SWEETEN: Don't reveal the subjective 5 intent of any specific person. You can -- you can as 6 the court has indicated, you can provide your 7 understanding of the purpose of the bill itself was, but 8 don't speculate as to subjective intent. You don't have 9 to do that and that's privileged. 10 MS. WESTFALL: I'm not asking about 11 subjective intent. Just to be clear. My question was 12 limited to the purpose of HB 218. 13 MR. SWEETEN: You can answer as to the 14 purpose of 218 as phrased. 15 A. If you're asking why they filed it? 16 Q. (By MS. WESTFALL) Yes. 17 A. I don't know. Presumably to improve the 18 integrity of the election process in Texas. 19 Q. How do you know that? 20 MR. SWEETEN: Don't reveal the conversations 21 that you've had. Those would be legislatively 22 privileged. You can answer as to the purpose of the 23 bill, I think you have, but you don't have to give all 24 the conversations you've had or the discussions mental 25 impressions that occurred as that bill was considered.</p>	<p>144</p> <p>1 problem with the integrity of elections at the time HB 2 218 was filed? 3 MR. SWEETEN: The question as phrased ask 4 you to reveal information, mental impressions, thoughts, 5 about specific legislation. In answer to the question, 6 don't do that. You can reveal matters that are on the 7 public record, but do not reveal the substance of 8 conversations and don't reveal mental impressions. 9 Those would be subject to the legislative privilege. So 10 objection. 11 A. I don't recall public discussion of the purpose 12 of this. 13 Q. (By MS. WESTFALL) Are you following the advice 14 of council as to any other purposes you're aware of or 15 basis of problems? 16 MR. SWEETEN: That wasn't your question. 17 Your question was different than that. If you want to 18 ask him what the purpose of the bill was, you can ask 19 him that. 20 Q. (By MS. WESTFALL) Is your response as to 21 evidence supporting need for the problem based on 22 private information for which you are asserting 23 privilege? 24 MR. SWEETEN: That is privileged, I would so 25 instruct you not to reveal mental impressions about the</p>



<p style="text-align: center;">145</p> <p>1 legislation or conversations that you've had with 2 anyone, any legislators, legislative staff or the other 3 enumerated individuals or entities.</p> <p>4 A. The short answer is I just don't recall.</p> <p>5 Q. (By MS. WESTFALL) Was HB 218 in part designed to 6 prevent noncitizens from voting?</p> <p>7 MR. SWEETEN: Don't answer that. You can 8 answer as to the specific purpose of the legislation. 9 She's now asking you about the design and the intent of 10 the subjective intent of individuals. So you can answer 11 as to the purpose of the legislation, the court has said 12 that you can and so I will allow that. But I'm not -- 13 but legislative privilege covers mental impression, 14 thoughts, about the bill in conversations related to the 15 bill.</p> <p>16 Q. (By MS. WESTFALL) Do you have any testimony in 17 response to my question?</p> <p>18 A. I think the answer is I don't know.</p> <p>19 Q. Are you following the advice of your council not 20 to provide testimony?</p> <p>21 MR. SWEETEN: And the correct question is, 22 are you saying that you don't know at all or are you 23 saying I don't know based upon the instruction.</p> <p>24 A. I'm saying I don't know at all.</p> <p>25 Q. (By MS. WESTFALL) Was the purpose of HB 218 in</p>	<p style="text-align: center;">147</p> <p>1 said that you do not have to testify based upon the 2 legislative privilege about the subjective intent of 3 individuals who passed a bill. You can testify about 4 the purpose of the legislation. When you're answering 5 this question, don't reveal matters that are subject to 6 legislative privilege, including the deliberations, 7 conversations, or mental impressions you may have had 8 when this particular bill was moving forward. So you 9 can answer to the extent you can.</p> <p>10 A. So how does one determine the purpose of the law 11 after it has passed Legislature.</p> <p>12 Q. (By MS. WESTFALL) Where does one look to 13 determine and ascertain and derive purpose?</p> <p>14 A. To the extent that the purpose is relevant to the 15 law, then I imagine a court would look at that and some 16 courts would give weight to things like history and 17 public comments and other courts would dismiss the 18 importance of legislative history entirely.</p> <p>19 Q. I believe you just testified that you saw 20 protecting the integrity of elections and preventing 21 noncitizens from voting was the same purpose; is that 22 correct?</p> <p>23 A. I'm sorry. Could you repeat?</p> <p>24 Q. I may have misunderstood you or misheard you. 25 But did you testify that ensuring integrity elections</p>
<p style="text-align: center;">146</p> <p>1 part to prevent noncitizens from voting?</p> <p>2 MR. SWEETEN: You can answer as to the 3 purpose of 218.</p> <p>4 A. It seems to me. I'm not sure how that's 5 different from the last question. I don't know the 6 purpose. I don't know why these members filed this 7 bill.</p> <p>8 Q. (By MS. WESTFALL) Are you aware of 9 representative Betty Brown, who was the sponsor of 218 10 stating on the House floor that it was designed to keep 11 illegal aliens, noncitizens and otherwise people not 12 qualified from voting?</p> <p>13 A. I don't recall that.</p> <p>14 Q. How do you determine what is legislative purpose 15 of a bill?</p> <p>16 A. I mean, when you say legislative purpose I think 17 of the intent of the author. Sometimes that is spelled 18 out in the bill in the four corners of the document, 19 what is the intent and other times it's from the floor 20 statement. Other times it's in their head and I don't 21 have access to that.</p> <p>22 Q. How do you figure out the intent when a bill is 23 enacted? How do you figure out the purpose of the bill 24 besides what you've just testified to?</p> <p>25 MR. SWEETEN: Okay. Again, the court has</p>	<p style="text-align: center;">148</p> <p>1 and preventing noncitizens from voting are one and the 2 same?</p> <p>3 A. I don't think I mentioned noncitizens. I 4 mentioned that ensuring the integrity of the election 5 system and instilling confidence in that system and the 6 voting public's purpose.</p> <p>7 Q. Okay. Do you believe that HB 218 would prevent 8 noncitizens from voting?</p> <p>9 MR. SWEETEN: Don't provide an answer to 10 that. That calls for matters that are legislatively 11 privileged.</p> <p>12 Q. (By MS. WESTFALL) Based on the face of the 13 statute?</p> <p>14 A. I think I don't know.</p> <p>15 MR. SWEETEN: You're asking his mental 16 impressions about a specific bill that is covered by the 17 legislative privilege. He can answer as to what he 18 thinks the legislative purpose is. He won't answer as 19 to subjective intent or his own personal mental 20 impressions about the bill. It's legislatively 21 privileged. Objection.</p> <p>22 Q. (By MS. WESTFALL) can you answer the question?</p> <p>23 A. The question is, will this bill prevent 24 noncitizens from voting?</p> <p>25 Q. Correct.</p>



<p style="text-align: center;">149</p> <p>1 A. I think to the extent it's designed to prevent 2 ineligible voters from voting and noncitizens or 3 ineligible voters, it probably will have that effect. 4 Q. Is it your understanding that a person's -- a 5 voter applicant's citizenship is determined by county 6 election officials when a person submits a voter 7 registration application?</p> <p>8 MR. SWEETEN: As it currently stands? The 9 current law or are you talking about under a new bill.</p> <p>10 MS. WESTFALL: Under any law.</p> <p>11 MR. SWEETEN: Under current law, you're 12 asking the question?</p> <p>13 BY MS. WESTFALL:</p> <p>14 Q. Do you understand the question?</p> <p>15 A. I think, yes. I think my understanding is you're 16 registered to vote in a county. That county registrar 17 determines whether you're eligible and if you are 18 submits that information to the Secretary of State.</p> <p>19 Q. And as part of the voter registration 20 application, does an applicant indicate whether he or 21 she is a US citizen?</p> <p>22 MR. SWEETEN: You can answer.</p> <p>23 A. I'm pretty sure, yes, but I don't have a 24 registration card in front of me.</p> <p>25 Q. (By MS. WESTFALL) And does photo ID legislation</p>	<p style="text-align: center;">151</p> <p>1 A. I believe that they can.</p> <p>2 Q. Do you know whether noncitizens in the State of 3 Texas can obtain a concealed handgun license?</p> <p>4 A. I'm actually not sure of that.</p> <p>5 Q. Do you know whether in the State of Texas a 6 noncitizen can obtain a military ID?</p> <p>7 A. I'm not sure of that either.</p> <p>8 Q. So if -- suppose a noncitizen submitted a voter 9 registration application and falsely indicated that he 10 or she was a US citizen and was added to the voter rolls 11 as a citizen, and then appeared at the polls on election 12 day with a driver's license that indicated his or her 13 identify, visually you could match the person and was 14 able to vote. Would that -- would that scenario be 15 prevented by HB 218 or similar photo ID legislation?</p> <p>16 MR. SWEETEN: In answering this question, 17 don't reveal your thoughts, mental impressions, or 18 opinions, about legislation or information you learned 19 from conversations with legislative staff members, 20 legislators, State agencies, Texas Legislative Council. 21 You can answer to the extent you're not revealing that 22 information.</p> <p>23 A. So the question is, a noncitizen has registered 24 to vote and has a photo ID, does this bill stop that 25 person from voting?</p>
<p style="text-align: center;">150</p> <p>1 including HB 218, help to prevent persons who are not US 2 citizens from casting a ballot?</p> <p>3 MR. SWEETEN: When you're answering this 4 question don't reveal your mental processes thoughts, 5 communications, with other people regarding specific 6 legislation. To the extent that you can answer not 7 based upon that information, you can do so.</p> <p>8 A. Again, I think, my guess, is this bill would 9 prevent some number of ineligible voters from voting and 10 to the extent that noncitizens are not eligible, then 11 they would be prevented from voting.</p> <p>12 Q. (By MS. WESTFALL) Can you elaborate on that and 13 how that would work?</p> <p>14 MR. SWEETEN: Again, don't reveal matters 15 that are subject to the legislator privilege in 16 answering this question.</p> <p>17 Q. (By MS. WESTFALL) Under the face of this 18 statute?</p> <p>19 A. On the face of House Bill 218, if you do not have 20 proper identification and you do not fall into one of 21 these exceptions, then you are not eligible to vote. So 22 to the extent you are a citizen or a noncitizen and fit 23 that description, you would not be eligible to vote.</p> <p>24 Q. Do you know under current law whether noncitizens 25 can obtain driver's licenses in the State of Texas?</p>	<p style="text-align: center;">152</p> <p>1 Q. (By MS. WESTFALL) Correct.</p> <p>2 A. I guess I'm not clear. Maybe there's some types 3 of ID under this bill that would have an indication of 4 whether the person was a citizen or not a citizen, which 5 presumably would be discovered by the poll worker.</p> <p>6 Q. Could you turn your attention again to HB 218 and 7 look at the list of photo IDs? I believe it begins on 8 Page 9, of section 63.0101?</p> <p>9 A. Yeah.</p> <p>10 Q. Could you identify one of the documentary -- one 11 of the photo IDs that would indicate a person's 12 citizenship?</p> <p>13 A. Again, I think outside the bounds of this 14 document, it may be that, you know, the Department of 15 Public Safety has guidelines for what a driver's license 16 looks like or that the United States Military has 17 guidelines for what a military ID looks like and those 18 guidelines might include some designation for citizen 19 versus noncitizen. Same as perhaps any of these.</p> <p>20 Q. Is your testimony today that you are uncertain of 21 whether the IDs indicate a person's citizenship status?</p> <p>22 MR. SWEETEN: You can answer the question, 23 but don't do it based upon matters that you learned 24 prior to the bill's passage, including the conversations 25 we've talked about. Don't reveal your thoughts and</p>



<p style="text-align: center;">153</p> <p>1 mental impressions, but you can answer if you're not 2 doing that. 3 A. Right. In the case of some of these I am unsure. 4 Q. (By MS. WESTFALL) Which ones are you unsure of? 5 Could you just identify those for the record? 6 A. Out of the list starting on Page 9? 7 Q. Yes. 8 A. Military identification I'm not sure. Employer 9 identification cards, it would depend on the employer 10 perhaps. Student identification cards perhaps. Again, 11 I'm unclear about concealed handgun licenses and number 12 eight is broad enough to include some card that has a 13 citizenship designation. That's any ID card issued by 14 the federal government or State government and then 15 subsection B official mail addressed to the person or 16 governmental entity that seems like it. 17 Q. What is the most commonly held form of 18 identification on this list, of photo IDs? 19 MR. SWEETEN: You can answer the question, 20 but as you're doing so don't reveal the thoughts, mental 21 impressions, about specific legislation or information 22 you have learned from conversations between legislatures 23 because that would be legislatively privileged. But you 24 can answer the question to the extent you're not doing 25 that.</p>	<p style="text-align: center;">155</p> <p>1 A. I may have a long time ago, but not so that I can 2 remember it. 3 Q. Can you take a look at US 75 and let me know 4 whether based on this document it refreshes your memory 5 as to whether HB 218 was referred to the State Affairs 6 Committee? 7 A. It was. 8 Q. About the Lieutenant Governor made that committee 9 assignment, correct? 10 A. Presumably, yes. 11 Q. Did the committee hold a hearing on HB 218? 12 A. Yes. 13 Q. And under the -- I believe, you testified under 14 the senate rules of Lieutenant Governor is not the -- 15 does not serve on the committee of State Affairs; is 16 that right? 17 A. Correct. 18 Q. And therefore he cannot order, convene committee 19 hearings or call witnesses; is that right? 20 A. Correct. 21 Q. Do you know who testified at that hearing? 22 A. I do not recall. 23 Q. And you were handling State Affairs that year; is 24 that correct? 25 A. Correct.</p>
<p style="text-align: center;">154</p> <p>1 A. So on House Bill 218, what is the most common 2 form of photo ID? 3 Q. (By MS. WESTFALL) Yes. 4 A. I don't know that. I would guess a driver's 5 license, but number eight seems broad enough that any ID 6 from a federal or state institution. I don't know. 7 Q. And it was your testimony earlier that you were 8 uncertain whether driver's license indicates US 9 citizenship; is that correct? 10 A. That's correct. I don't believe it does, but I'm 11 not a 100 percent sure. 12 Q. After the House -- maybe you testified about this 13 earlier. Oh, no. After the House passed HB 218, was it 14 considered by the senate? 15 MR. SWEETEN: You can answer as matters of 16 public record. 17 A. I don't recall. 18 Q. (By MS. WESTFALL) Could you mark this as 75? 19 (Exhibit No. 75 was marked.) 20 Q. (By MS. WESTFALL) You've been handed what's 21 marked US 75. Do you recognize this document? 22 A. Yes. 23 Q. What is it? 24 A. It's the legislative history of HB 218. 25 Q. Have you reviewed this before today?</p>	<p style="text-align: center;">156</p> <p>1 Q. Do you know whether the bill was amended in 2 committee? 3 A. I don't recall that either. 4 Q. And after committee consideration, was it voted 5 out of committee? 6 A. Yes. This indicates that it was. 7 Q. Was it voted out on party lines? 8 A. I don't recall that either. 9 Q. Did HB 218 require the support of two-thirds of 10 the senators to bring it to the floor for a vote? 11 A. In '07, I believe those were the senate rules, 12 yes. 13 Q. And why was that quantum of senators required? 14 A. That is a long standing rule that applies to all 15 bills in the senate. Two-thirds of the senate must 16 agree to take items out of order and there's typically a 17 place holder bill at the top of the calendar. 18 Q. What is the purpose of that rule? 19 MR. SWEETEN: You can answer. 20 A. I don't know the purpose. I think most people 21 would say it encourages some level of conciliation or 22 cooperation. 23 Q. (By MS. WESTFALL) What was the partisan 24 composition of the Senate in 2007, do you recall? 25 A. I don't recall. Maybe -- I would guess 21/10,</p>



<p style="text-align: center;">157</p> <p>1 but I don't know for sure.</p> <p>2 Q. And if all democrats were present on the floor to</p> <p>3 vote against the bill, could they block legislation</p> <p>4 subject to the two-thirds rule?</p> <p>5 A. In 2007?</p> <p>6 Q. 2007?</p> <p>7 A. Yeah. It would take 11 votes. And so if it was</p> <p>8 21 to 10, then, no, the democrats would not be able to</p> <p>9 stop it or the opposition would not be able to stop it.</p> <p>10 Q. Do you believe there were 11 democrats?</p> <p>11 MR. SWEETEN: Objection, asked and answered.</p> <p>12 Q. (By MS. WESTFALL) Did the Lieutenant Governor</p> <p>13 attempt to bring 218 -- pardon me. HB 218 to the Senate</p> <p>14 floor for a vote?</p> <p>15 MR. SWEETEN: You can answer the question.</p> <p>16 But in doing so don't reveal communications you've had</p> <p>17 with other members of the Lieutenant Governor's staff or</p> <p>18 mental impressions regarding this specific bill, but you</p> <p>19 ask answer if you know.</p> <p>20 A. I don't recall. I'm trying to remember looking</p> <p>21 at this.</p> <p>22 Q. (By MS. WESTFALL) Do you know any of the</p> <p>23 circumstances under which Lieutenant Governor brought HB</p> <p>24 218 to the Senate floor?</p> <p>25 MR. SWEETEN: Objection vague. Also</p>	<p style="text-align: center;">159</p> <p>1 you are aware of the conversation.</p> <p>2 A. I don't think so, no.</p> <p>3 Q. (By MS. WESTFALL) Do you know -- strike that.</p> <p>4 When the Lieutenant Governor called a vote to</p> <p>5 bring HB 218 to the Senate for a vote, how many Senators</p> <p>6 were present on the Senate floor?</p> <p>7 A. I do not recall.</p> <p>8 Q. Do you recall whether anyone was not present?</p> <p>9 A. When the vote was called? No.</p> <p>10 Q. Are you aware of whether Lieutenant Governor was</p> <p>11 aware at the time of the Senate vote on HB 218 of the</p> <p>12 concerns that HB 218 would disproportionately harm</p> <p>13 minority voters?</p> <p>14 MR. SWEETEN: Okay. I'm going to object</p> <p>15 based upon legislative privilege and also based upon</p> <p>16 speculation. I'm going to instruct you not to reveal</p> <p>17 information that you may have learned from any</p> <p>18 conversations with the Lieutenant Governor, with any</p> <p>19 legislators, with any legislative staff, state agencies,</p> <p>20 Texas Legislative Council. So that's my instruction to</p> <p>21 you. Don't answer the question as posed.</p> <p>22 A. I'm not aware of such information.</p> <p>23 Q. (By MS. WESTFALL) Are you asserting privilege</p> <p>24 over some of your testimony based upon council's advice?</p> <p>25 MR. SWEETEN: I'm instructing you that what</p>
<p style="text-align: center;">158</p> <p>1 objection, I'm going to instruct you not to reveal</p> <p>2 matters of legislative privilege including conversations</p> <p>3 between legislators, between Lieutenant Governor, staff</p> <p>4 members, other individuals.</p> <p>5 A. I don't recall.</p> <p>6 Q. (By MS. WESTFALL) Are you following the</p> <p>7 instruction of council and asserting privilege over some</p> <p>8 your testimony or is it your testimony fully that you</p> <p>9 don't recall anything about this?</p> <p>10 A. My testimony is, that I do not recall whether the</p> <p>11 Lieutenant Governor what he did in the process of</p> <p>12 bringing this or not bringing this to the Senate floor.</p> <p>13 Q. Were you present in any meetings or a party to</p> <p>14 any conversations that the Lieutenant Governor held</p> <p>15 concerning the timing of the vote of HB 218 on the</p> <p>16 Senate floor?</p> <p>17 MR. SWEETEN: I'll let you answer as too</p> <p>18 whether or not -- you can answer.</p> <p>19 A. I don't recall anything like that.</p> <p>20 Q. (By MS. WESTFALL) Are you aware of any</p> <p>21 conversation between the Senator or any member of the</p> <p>22 Senate the day before the vote? Or the day of the vote</p> <p>23 in the Senate?</p> <p>24 MR. SWEETEN: You can answer whether or not</p>	<p style="text-align: center;">160</p> <p>1 she's asking you would require you to reveal privilege.</p> <p>2 So my instruction would be to not answer the question.</p> <p>3 Q. (By MS. WESTFALL) Are you following your</p> <p>4 counsel's advice?</p> <p>5 A. Yes.</p> <p>6 Q. Where were you working, physically, in the</p> <p>7 capital the day of the vote for HB 218 on the Senate</p> <p>8 floor?</p> <p>9 A. I don't remember. I most certainly was not on</p> <p>10 the Senate floor. It would have been my first session.</p> <p>11 So I probably was in my office, which is in the basement</p> <p>12 two floors below.</p> <p>13 Q. Are you aware that the vote on HB 218 was held</p> <p>14 when not all members were present on the floor?</p> <p>15 A. I don't know.</p> <p>16 Q. Can you recall during your time working for the</p> <p>17 Lieutenant Governor of any time when a vote was held,</p> <p>18 intentionally scheduled to be brought to the floor when</p> <p>19 a member of the Senate was sick and had called in sick</p> <p>20 that day?</p> <p>21 MR. SWEETEN: You can answer to the extent</p> <p>22 you're not being asked to reveal matters of legislative</p> <p>23 privilege.</p> <p>24 A. I'm not aware of such circumstance.</p> <p>25 Q. (By MS. WESTFALL) Do you know that there was a</p>



<p style="text-align: center;">161</p> <p>1 vote on HB 218 and then there was a request to verify 2 the vote?</p> <p>3 A. That sounds right in the recesses of my mind, but 4 I can't be 100 percent sure.</p> <p>5 Q. Can you tell me what you remember about the 6 verification of the vote of HB 218 in the Senate floor?</p> <p>7 MR. SWEETEN: You can discuss matters of 8 public record which is what I think the question is 9 asking.</p> <p>10 A. My memory is that there were not the votes to 11 bring it up. I forget what the votes were for that.</p> <p>12 Q. (By MS. WESTFALL) Did the Senate take any 13 further action on HB 218?</p> <p>14 A. I don't recall.</p> <p>15 Q. Did HB 218 -- was there a failure to suspend the 16 regular order of business rule with two-thirds of the 17 vote?</p> <p>18 MR. SWEETEN: You can testify as to matters 19 of public record. Don't reveal matters that are 20 legislatively privileged. We can discuss those areas if 21 you would like me to go through them.</p> <p>22 MS. WESTFALL: This is a procedural question 23 purely Mr. Sweeten.</p> <p>24 MR. SWEETEN: But if, you know, Elizabeth, 25 you don't know what he's -- I mean, if it comes from a</p>	<p style="text-align: center;">163</p> <p>1 further action on the bill?</p> <p>2 A. I don't recall further action.</p> <p>3 Q. Are you aware of any communications about HB 218 4 after it did not pass the Senate?</p> <p>5 MR. SWEETEN: You can answer if you're aware 6 of any communications. Don't reveal the substance of 7 those communications, however. Go ahead.</p> <p>8 A. When you say aware of communications?</p> <p>9 Q. (By MS. WESTFALL) Were there any conversations 10 about HB 218 after it didn't pass?</p> <p>11 MR. SWEETEN: Same instruction. Don't 12 reveal the conversation substance, but you can -- you 13 can answer that question as posed.</p> <p>14 A. I certainly don't recall any specifics, but my 15 guess is any piece of legislation would be discussed in 16 some capacity among some staff or something, but I don't 17 recall any particular conversations.</p> <p>18 Q. (By MS. WESTFALL) Could you mark this as US 3? 19 (Exhibit No. 3 was marked.)</p> <p>20 Q. (By MS. WESTFALL) You've been handed what's been 21 previously been marked as US 3. Do you recognize this 22 document?</p> <p>23 A. It is a Texas weekly article about legislative 24 activity the previous week. Looks like it starts with 25 some voter ID issues.</p>
<p style="text-align: center;">162</p> <p>1 conversation he learned from someone, potentially it 2 could impact privilege. That's why I'm letting him 3 answer with the instructions.</p> <p>4 MS. WESTFALL: You're asserting privilege 5 over a procedural matter that he has knowledge of just 6 because he has a conversation; Is that your position?</p> <p>7 MR. SWEETEN: My position as it's been all 8 the way through is that legislative privilege covers 9 communications that he would have had with legislators, 10 with legislative staff members, State agencies, Texas 11 Legislative Council, to the extent this does not call 12 for that information or for his mental impressions about 13 the bill. I'm going to let him answer it, but to the 14 extent that it invades those areas of communication that 15 are covered by the legislative privilege, my instruction 16 would be not to answer. So you can answer with that 17 instruction.</p> <p>18 A. My memory is that there were not votes to bring 19 the bill to the floor.</p> <p>20 BY MS. WESTFALL:</p> <p>21 Q. What happened to HB 218 in the Senate, 22 ultimately?</p> <p>23 MR. SWEETEN: Same instruction.</p> <p>24 A. It looks like it did nothing.</p> <p>25 Q. (By MS. WESTFALL) Did the Senate take any</p>	<p style="text-align: center;">164</p> <p>1 Q. Have you seen this article before?</p> <p>2 A. I probably read the tribune that week. If you 3 give me a second I can.</p> <p>4 Q. I will definitely give you a second.</p> <p>5 A. Looks like it reproduces a letter that Lieutenant 6 Governor Dewhurst sent out and then some reaction to 7 that letter.</p> <p>8 Q. Are you familiar with the letter?</p> <p>9 A. I remember it now that I'm reading it.</p> <p>10 Q. Do you know who drafted the letter?</p> <p>11 A. I do not.</p> <p>12 Q. Do you know anything about the circumstances of 13 the drafting of the letter?</p> <p>14 MR. SWEETEN: Don't reveal communications 15 subject to legislative privilege in answering the 16 question.</p> <p>17 MS. WESTFALL: I'm examining the witness 18 about a letter that was in the Texas Weekly, so this is 19 pretty public.</p> <p>20 MR. SWEETEN: I'll let him testify to the 21 extent that he's not revealing communications that are 22 subject to the legislative privilege.</p> <p>23 A. The question was the circumstances of this 24 letter?</p> <p>25 Q. (By MS. WESTFALL) Yes.</p>



<p>165</p> <p>1 A. I'm not aware of any specifics other than it came 2 out after the vote we discussed earlier.</p> <p>3 Q. Did you, yourself, have any part in drafting 4 this?</p> <p>5 A. No. I should say it's possible I reviewed, you 6 know, some of the statistics and things in here, but I 7 did not draft this letter.</p> <p>8 Q. Would the press person in Mr. Dewhurst's office 9 likely have drafted this?</p> <p>10 MR. SWEETEN: Objection, calls for 11 speculation.</p> <p>12 A. I really don't know.</p> <p>13 Q. (By MS. WESTFALL) So you handled photo ID for 14 the Lieutenant Governor, correct?</p> <p>15 A. I handled the legal and procedural analysis of 16 it, yes.</p> <p>17 Q. And you testified and identified a press person 18 earlier; is that correct?</p> <p>19 A. Correct.</p> <p>20 Q. And the press person in your office, did he 21 usually write all of the substance for all of his press 22 releases or did he rely upon the subject matter experts 23 within the office to assist him with content?</p> <p>24 A. Well, in this case it would have been a different 25 press person. In '07, again, it would be typical to</p>	<p>167</p> <p>1 license or some other common form of ID at the election 2 polls to prove who they say they are, US citizens. Do 3 you see that sentence?</p> <p>4 A. I do see that sentence.</p> <p>5 Q. Can you explain how HB 218 would ensure that 6 people prove they are US citizens at the polls?</p> <p>7 MR. SWEETEN: Don't reveal your thoughts, 8 your mental impressions, about legislation or in 9 furtherance of the legislative process including Senate 10 Bill 14. Do not reveal conversations you had with 11 Lieutenant Governor Dewhurst. Do not reveal 12 conversations you've had with legislators, legislative 13 staff, state agencies, or Texas Legislative Council.</p> <p>14 A. Right. Just looking, again, at the face of the 15 bill and as we discussed earlier, I think the intent is 16 to ensure that eligible voters vote and you have to be a 17 US citizen to vote and so I assume that's what this 18 sentence is getting at.</p> <p>19 Q. (By MS. WESTFALL) I believe you testified 20 earlier that you were not certain of whether the forms 21 of photo ID required by HB 218, in fact, proved that the 22 voter was a citizen; is that right?</p> <p>23 A. That's what I said, yeah.</p> <p>24 Q. So is there any way that you can reconcile your 25 understanding of what the forms of photo ID require and</p>
<p>166</p> <p>1 have a draft to the extent there were things like 2 statics or procedural history, those things would have 3 been run by a staff person. But it's also not uncommon 4 for Lieutenant Governor to write his own opinions and 5 then have those crafted into a press release format.</p> <p>6 Q. Do you think in this instance Lieutenant Governor 7 wrote this letter himself because you handled photo ID 8 and you don't recall having drafted this?</p> <p>9 MR. SWEETEN: Objection, calls for 10 speculation.</p> <p>11 A. Again, I would never have -- I think it's safe to 12 say that I would never have drafted a press release. 13 I'm not sure if this is a press release or something he 14 sent directly to the Senate or something else. It's 15 addressed to Senate colleagues and it's signed David 16 Dewhurst. That would be an unusual formate for a press 17 release I would think.</p> <p>18 Q. (By MS. WESTFALL) Do you think that was a leaked 19 letter that Mr. Dewhurst wrote?</p> <p>20 MR. SWEETEN: Objection, calls for 21 speculation. He's already said his doesn't know.</p> <p>22 Q. (By MS. WESTFALL) Can you see that in the draft 23 letter referred to that was later corrected that's 24 referred to on Page 1, that it says in the second 25 paragraph, HB 218 requires voters to present a driver's</p>	<p>168</p> <p>1 show and prove, versus what you just testified your 2 belief is in terms of the purpose and effect of House 3 Bill 218?</p> <p>4 MR. SWEETEN: Objection to the question as 5 vague. Objection also to the extent that the question 6 requires or asks you to reveal your thoughts, mental 7 impressions, or opinions about legislation. Okay, 8 Don't reveal communications that you've had with respect 9 to the issue. If you can answer it without doing -- 10 without providing matters that are subject to 11 legislative privilege or to the attorney/client 12 privilege, then you can do so.</p> <p>13 A. I would just say that, I mean, I think this bill 14 would make it more likely that eligible voters only are 15 voting and citizens are the only eligible voters, then 16 it would have -- it would be reflected in what this 17 letter says.</p> <p>18 Q. (By MS. WESTFALL) And what I'm trying to 19 understand is, can you explain further how you believe 20 HB 218 would further that purpose?</p> <p>21 MR. SWEETEN: Same objection. Same 22 instructions.</p> <p>23 A. By requiring additional forms of identification, 24 you are attempting to ensure and, again, not system is 25 perfect. You are attempting to insure that only</p>



<p style="text-align: center;">169</p> <p>1 eligible voters can vote. And I think the more -- in my 2 opinion, the more secure you try to make these 3 elections, the less tempted someone who wants to 4 fraudulently vote is -- the less tempted they are to 5 vote or the less able they are to vote.</p> <p>6 Q. But you nevertheless testified earlier that a 7 person's citizenship status is determined at the voter 8 registration stage; is that correct?</p> <p>9 MR. SWEETEN: You can testify about matters 10 of fact, she asked you that earlier. You do not testify 11 about your mental impressions, communications that you 12 had, or thoughts and impressions about a specific piece 13 of legislation. That is legislatively privileged. So 14 I'm going to instruct you accordingly. You can answer 15 to the extent you are not revealing matters of 16 privilege.</p> <p>17 A. I also think it's useful to point out that it not 18 just be noncitizens who would be presumably prohibited 19 from voting. It would be anyone trying to 20 fraudulently -- me trying to vote in a different county, 21 me trying to vote in an election in which I'm not 22 eligible to participate. So I think the idea here, and 23 my opinion here is, you are putting up some standards 24 and if a fraudulent person wants to try to vote 25 fraudulently, they are going to have to get through</p>	<p style="text-align: center;">171</p> <p>1 BY MS. WESTFALL: 2 Q. So would HB 218 prevent the following scenario: 3 Noncitizen lies on voter registration application, 4 county official adds that person to the rolls. That 5 person has a driver's license or another form of photo 6 ID that does not indicate citizenship. That person goes 7 to the polls, presents the photo ID and votes a regular 8 ballot. Would HB 218 stop that? 9 MR. SWEETEN: Again -- 10 Q. (By MS. WESTFALL) On the basis of the public 11 record, the face of the statute? 12 MR. SWEETEN: Okay. You can answer with 13 that qualification. 14 A. Based on this statute, someone who committed, I 15 think those two or three levels of fraud, potentially 16 could vote and again I think that is a much smaller 17 class of potential fraud than the existing system which 18 is you just have to do first thing, get your card and 19 show up and vote. 20 Q. (By MS. WESTFALL) Does HB 218 solely stop 21 in-person voter impersonation? 22 MR. SWEETEN: When you're answering this 23 question don't -- 24 Q. (By MS. WESTFALL) Based on the face of the 25 statute?</p>
<p style="text-align: center;">170</p> <p>1 several hurdles or, you know, yes, you have to check a 2 box saying that you're a citizen and then turn that into 3 your County. 4 As the current law stands, that would be enough 5 for you to vote fraudulently. If you put in Mickey 6 Mouse, and this was an example, I think, if you wrote 7 Mickey Mouse, yes, I'm a citizen and you get that ID 8 card, that voter registration card, you could vote. 9 This would require you also to get some sort of photo ID 10 with Mickey Mouse on it, which is, again, not a fool 11 proof system and does not prevent every ineligible voter 12 from voting, but I think it raises the bar somewhat of 13 the security of the election. 14 Q. (By MS. WESTFALL) Well, likewise, a voter 15 registration card that has the individual's name and 16 address indicating he or she is a voter, also 17 indicates -- proves identity under the current system; 18 isn't that correct? 19 MR. SWEETEN: Are you asking about current 20 law? 21 MS. WESTFALL: Yes, I'm asking about current 22 law. Do you understand the question. 23 A. Yes. A voter registration card is a form of 24 identity under the current system and then this bill 25 apparently thinks that's not secure enough.</p>	<p style="text-align: center;">172</p> <p>1 MR. SWEETEN: You can answer based on the 2 face of the statute. 3 A. I think no bill, including this statute, is able 4 to stop every type of fraud in every type of 5 circumstance. 6 Q. (By MS. WESTFALL) So in answer to my question, 7 yes, it is solely designed to stop in-person 8 impersonation? 9 MR. SWEETEN: Objection, misstates his 10 testimony. 11 A. Yeah. And I think potentially there are other, y 12 ou know, intents here. I'm just not aware. I mean, you 13 could argue that this decreases the incidents of 14 fraudulent voter registration. If people know that they 15 will now have to show an ID when they show up to vote, 16 they may never bother to file a fake registration card 17 in the first place. So the side effect of this could be 18 fewer fraudulent registrations in addition to fewer 19 fraudulent in-person attempts to vote. 20 Q. (By MS. WESTFALL) Do you think it would deter 21 fraudulent registration even though the IDs, the photo 22 IDs, required in HB 218 do not require a person to be a 23 US citizen to obtain those IDs; is that your testimony? 24 MR. SWEETEN: Don't reveal your thoughts-- 25 MS. WESTFALL: Based on the face of the</p>



<p>173</p> <p>1 statue --</p> <p>2 MR. SWEETEN: -- without legislation.</p> <p>3 A. Based on this bill, I don't -- I could read it</p> <p>4 more closely. I don't get the intent that it's</p> <p>5 noncitizens that the bill is worried about. They're</p> <p>6 worried about in eligible voters which may be US</p> <p>7 citizens or Texas citizens, but still in eligible to</p> <p>8 vote. I could request a, you know, registration for my</p> <p>9 roommate. We may both be citizens, I still can't go</p> <p>10 vote in his name.</p> <p>11 Q. (By MS. WESTFALL) Isn't eligibility to vote</p> <p>12 determined at the voter registration stage and not at</p> <p>13 the point of presenting yourself to vote on election</p> <p>14 day?</p> <p>15 MR. SWEETEN: You're saying under current</p> <p>16 law?</p> <p>17 MS. WESTFALL: Under current law.</p> <p>18 MR. SWEETEN: You can answer.</p> <p>19 A. The eligibility question is, yes, do I have</p> <p>20 sufficient -- I still have to when I show up to vote</p> <p>21 either show the required proof of registration or some</p> <p>22 other form of identification, answer whether I'm still</p> <p>23 living at the same address. I mean, there's still some</p> <p>24 interaction with the poll worker there.</p> <p>25 Q. That is --</p>	<p>175</p> <p>1 that right?</p> <p>2 MR. SWEETEN: Are you asking about the face</p> <p>3 of the statute?</p> <p>4 MS. WESTFALL: I'm asking about the face of</p> <p>5 the statute.</p> <p>6 MR. SWEETEN: Okay.</p> <p>7 A. The bill on its face requires a voter to prevent</p> <p>8 certain forms -- one of certain forms of acceptable ID.</p> <p>9 BY MS. WESTFALL:</p> <p>10 Q. And HB 218 does not govern or change current law</p> <p>11 pertaining to how a voter registers to vote; is that</p> <p>12 correct?</p> <p>13 A. Give me a second to double-check.</p> <p>14 MR. SWEETEN: You can answer based upon the</p> <p>15 statute, the face of the statute.</p> <p>16 A. In the provisions that state what happens if a</p> <p>17 voter only has a registration certificate, but in terms</p> <p>18 of actually getting a voter on the rolls and becoming a</p> <p>19 registered voter, apparently no.</p> <p>20 Q. (By MS. WESTFALL) Thank you.</p> <p>21 MR. SWEETEN: Okay. We're going to take a</p> <p>22 quick break. I don't mean a big long.</p> <p>23 MS. WESTFALL: Sure.</p> <p>24 (Brief recess.)</p> <p>25 BY MS. WESTFALL:</p>
<p>174</p> <p>1 MR. SWEETEN: We're going to take a break</p> <p>2 after this question, but go ahead.</p> <p>3 Q. (By MS. WESTFALL) What you just testified about,</p> <p>4 is it not, is proving who you say you are at the polls</p> <p>5 on election day; is that correct?</p> <p>6 A. I'm sorry.</p> <p>7 Q. Proving your identity on election day, those are</p> <p>8 the --</p> <p>9 MR. SWEETEN: Objection.</p> <p>10 Q. (By MS. WESTFALL) That's the scope of the issue</p> <p>11 that you just defined?</p> <p>12 MR. SWEETEN: Objection to the question as</p> <p>13 vague.</p> <p>14 A. I'm not clear what you're asking. I'm sorry.</p> <p>15 Q. (By MS. WESTFALL) Is there a difference between</p> <p>16 voter registration and proving your identity at the</p> <p>17 polls on election day?</p> <p>18 MR. SWEETEN: When you're answering that</p> <p>19 question, don't reveal matters of legislative privilege.</p> <p>20 MS. WESTFALL: Based on current law. Based</p> <p>21 on the current face of the statute.</p> <p>22 A. Under current law those are different processes.</p> <p>23 BY MS. WESTFALL:</p> <p>24 Q. And HB 218 is designed to -- or it does require</p> <p>25 proof of identification at the polls on election day; is</p>	<p>176</p> <p>1 Q. We're back on the record.</p> <p>2 Turning your attention back to Exhibit 3, are you</p> <p>3 aware that a corrected letter was released after initial</p> <p>4 letter was released referred to in Exhibit 3?</p> <p>5 A. Yes.</p> <p>6 Q. How soon was it released?</p> <p>7 A. I don't know.</p> <p>8 Q. Do you know why it was released?</p> <p>9 A. No.</p> <p>10 Q. Do you know changes that were made to the letter</p> <p>11 between the draft that was released and the corrected</p> <p>12 draft?</p> <p>13 A. I don't recall.</p> <p>14 Q. Did the Lieutenant Governor at some point come to</p> <p>15 the conclusion that photo ID would not prevent</p> <p>16 noncitizen voting?</p> <p>17 MR. SWEETEN: Don't answer the question as</p> <p>18 phrased. It would require you to reveal matters that</p> <p>19 are subject to the legislative privilege and potentially</p> <p>20 attorney/client privilege.</p> <p>21 Q. (By MS. WESTFALL) You going to follow your</p> <p>22 counsel's instruction?</p> <p>23 A. Yes.</p> <p>24 Q. Are you aware of any discussions about noncitizen</p> <p>25 voting that occurred in 2007 involving your office?</p>



<p style="text-align: center;">177</p> <p>1 MR. SWEETEN: You can answer whether or not 2 there was a discussion.</p> <p>3 A. 2007 session were noncitizens ever discussed in 4 the context of voter ID?</p> <p>5 Q. (By MS. WESTFALL) Correct.</p> <p>6 A. I'm not sure.</p> <p>7 Q. Is there a connection between the photo ID bill 8 HB 218, and the growth of noncitizen population in 9 Texas?</p> <p>10 MR. SWEETEN: Don't answer the question. It 11 calls for matters that are subject to the legislative 12 privilege.</p> <p>13 Q. (By MS. WESTFALL) Are you going to follow your 14 counsel's instruction?</p> <p>15 A. Yes.</p> <p>16 Q. Have you ever heard of such an assertion before?</p> <p>17 A. Heard an assertion that voter ID is tied to 18 growth, I don't guess I have, no.</p> <p>19 MR. SWEETEN: And when you're answering --</p> <p>20 Q. (By MS. WESTFALL) Did you say you have not?</p> <p>21 MR. SWEETEN: He said he has not. But just 22 so you're clear, don't reveal communications that are 23 nonpublic. You can reveal a matter of a public 24 communication, but I think your answer is no.</p> <p>25 Q. (By MS. WESTFALL) Are you aware of any public</p>	<p style="text-align: center;">179</p> <p>1 A. I cannot remember specific references.</p> <p>2 Q. (By MS. WESTFALL) Can you remember any 3 references?</p> <p>4 MR. SWEETEN: Same instruction.</p> <p>5 A. Right. I mean, again, I think to the extent I'm 6 aware of noncitizens it was in the context of a 7 discussion about ineligible voters and noncitizens would 8 be part of a class of eligible voters.</p> <p>9 Q. (By MS. WESTFALL) And beyond the testimony that 10 you gave earlier today, is there anything in addition 11 that you remember on that topic in terms of 12 conversations?</p> <p>13 MR. SWEETEN: Don't reveal communication 14 that you've had with legislatures, legislative staff, 15 Lieutenant Governor, State agencies, Texas Legislative 16 Council.</p> <p>17 A. No.</p> <p>18 Q. (By MS. WESTFALL) Are you familiar with the 19 Crawford supreme court decision?</p> <p>20 A. Yes.</p> <p>21 Q. Did you read it when it was issued in 2008?</p> <p>22 A. Almost certainly.</p> <p>23 Q. Did you at that time believe that it impacted the 24 ability of States to craft photo ID laws?</p> <p>25 MR. SWEETEN: Don't provide your mental</p>
<p style="text-align: center;">178</p> <p>1 statements about tying photo ID to noncitizen voting?</p> <p>2 MR. SWEETEN: You can answer.</p> <p>3 A. No. I think that's the same question I was 4 answering before.</p> <p>5 Q. (By MS. WESTFALL) Have you heard anyone in 6 either the Governor's office or the Lieutenant 7 Governor's office make any statement connecting photo ID 8 with noncitizen voting?</p> <p>9 MR. SWEETEN: Has you ever heard -- can you 10 restate that again because I don't know if we're talking 11 about a public statement as phrased or if you're talking 12 about communications.</p> <p>13 (Requested question was read.)</p> <p>14 MR. SWEETEN: Don't reveal communications 15 you've had with members of the Lieutenant Governor's 16 staff. Those would be attorney/client privileged. 17 Don't reveal matters of legislative privilege to the 18 extent that you can answer based upon the public record 19 or public statement, you can go ahead and do so.</p> <p>20 A. So did anyone in the Governor's or Lieutenant 21 Governor's office publicly or privately mention 22 noncitizens and photo ID; is that the question?</p> <p>23 Q. (By MS. WESTFALL) Yes.</p> <p>24 MR. SWEETEN: And my instruction is don't 25 reveal any nonpublic statements with respect to that.</p>	<p style="text-align: center;">180</p> <p>1 impressions at the time. Those are matters of 2 legislative privilege. You don't have to reveal those.</p> <p>3 Q. (By MS. WESTFALL) Can you answer or can you not 4 answer?</p> <p>5 MR. SWEETEN: My instruction about 6 legislative privilege applies.</p> <p>7 A. Yeah. I think, I don't have an answer based on 8 privilege.</p> <p>9 Q. (By MS. WESTFALL) Did you believe that the 10 Crawford decision impacted the ability of states covered 11 by Section 5 of the Voting Rights Act to obtain 12 preclearance under Section 5?</p> <p>13 MR. SWEETEN: Don't answer the question. 14 That requires you to reveal matters that are subject to 15 the legislative privilege.</p> <p>16 MS. WESTFALL: Are you instructing him not 17 to answer at all.</p> <p>18 MR. SWEETEN: I am. Unless, except to the 19 extent that you can refer to matters of the public 20 record.</p> <p>21 BY MS. WESTFALL:</p> <p>22 Q. Are you following your counsel's advice?</p> <p>23 A. Yes.</p> <p>24 Q. Are you aware of any communications between the 25 Lieutenant Governor's office and officials in Indiana</p>



<p style="text-align: center;">181</p> <p>1 regarding this photo ID law?</p> <p>2 MR. SWEETEN: You can answer whether or not</p> <p>3 you're aware of communication.</p> <p>4 A. Between Lieutenant Governor's office and Indiana,</p> <p>5 I believe that in the '09 and '11 sessions public</p> <p>6 testimony was given by representatives from Indiana.</p> <p>7 Q. (By MS. WESTFALL) And is that -- are those the</p> <p>8 only communications you can testify about today?</p> <p>9 A. Yes.</p> <p>10 Q. Are you asserting privilege over other</p> <p>11 communications that you had with -- you're aware of</p> <p>12 between Lieutenant Governor's office and Indiana</p> <p>13 election officials?</p> <p>14 A. Yes.</p> <p>15 Q. Are you aware of any communications between</p> <p>16 Lieutenant Governor's office and Indiana officials</p> <p>17 regarding the Crawford decision?</p> <p>18 A. No.</p> <p>19 Q. Are you aware of any written communications</p> <p>20 between the Lieutenant Governor's office and Indiana</p> <p>21 officials regarding its photo ID law or the Crawford</p> <p>22 decision?</p> <p>23 MR. SWEETEN: You can answer if you're aware</p> <p>24 of such communications.</p> <p>25 A. I believe, yes.</p>	<p style="text-align: center;">183</p> <p>1 person that was communicating.</p> <p>2 A. My memory is that it would have been Senator</p> <p>3 Fraser and his staff arranging for witnesses for their</p> <p>4 bill.</p> <p>5 Q. (By MS. WESTFALL) Are you aware of any other</p> <p>6 such communications with Indiana officials?</p> <p>7 A. No.</p> <p>8 Q. Are you aware of any communications between the</p> <p>9 Lieutenant Governor's office and the officials in</p> <p>10 Indiana regarding the burden imposed upon Indiana voters</p> <p>11 by the photo ID law?</p> <p>12 MR. SWEETEN: Objection. You're asking the</p> <p>13 substance of the communication. If you want to ask</p> <p>14 about whether communications occurred that's fine, but</p> <p>15 this is loaded with information about what the</p> <p>16 conversations pertained to, so I'm going to instruct you</p> <p>17 as phrased not to answer the question.</p> <p>18 Q. (By MS. WESTFALL) Are you following the advice</p> <p>19 of council.</p> <p>20 A. Yes.</p> <p>21 Q. Was a photo ID bill filed in the Senate in 2009?</p> <p>22 MR. SWEETEN: You can answer.</p> <p>23 A. Yes.</p> <p>24 MS. WESTFALL: Mr. Sweeten, are you going to</p> <p>25 be instructing him yes, no, yes, no for every question</p>
<p style="text-align: center;">182</p> <p>1 Q. (By MS. WESTFALL) What communication are you</p> <p>2 aware of?</p> <p>3 MR. SWEETEN: Don't reveal the substance of</p> <p>4 the communication.</p> <p>5 Q. (By MS. WESTFALL) When did it occur?</p> <p>6 MR. SWEETEN: You can answer.</p> <p>7 A. I think it would have been just prior to their</p> <p>8 public testimony.</p> <p>9 Q. (By MS. WESTFALL) Who was the communication</p> <p>10 between?</p> <p>11 MR. SWEETEN: You can answer.</p> <p>12 A. Again, I think -- I think it would have been</p> <p>13 between the person who went up to publically testify in</p> <p>14 each case.</p> <p>15 Q. (By MS. WESTFALL) How do you know about this</p> <p>16 communication?</p> <p>17 A. My memory is that I was included on</p> <p>18 correspondence leading up to that testimony.</p> <p>19 Q. And so this correspondence that you were copied</p> <p>20 on involving Indiana officials before the testimony on</p> <p>21 the 2009 bill?</p> <p>22 A. I think that's right. Yes.</p> <p>23 Q. Who in the legislature was communicating with the</p> <p>24 Indiana officials?</p> <p>25 MR. SWEETEN: You can answer if you know the</p>	<p style="text-align: center;">184</p> <p>1 moving forward? Is that how it's going to go? Does he</p> <p>2 need that level of advice because it's going to burn up</p> <p>3 a lot of time and kind of interrupt the flow.</p> <p>4 MR. SWEETEN: Well, I'm not trying to</p> <p>5 interrupt the flow. I'm trying to be clear on --</p> <p>6 because we're asserting privilege on many of these</p> <p>7 questions that you know that I have been asserting</p> <p>8 privilege to and you keep bringing up. So I will try to</p> <p>9 rein that in, but I want to make it clear that you keep</p> <p>10 treading into areas that you well know that I've been</p> <p>11 asserting privilege on. And so to the extent you keep</p> <p>12 doing that, I'm going to have to continue to impose this</p> <p>13 objection. But with that, you can go ahead and answer.</p> <p>14 BY MS. WESTFALL:</p> <p>15 Q. So, yes, a photo ID bill was filed in the Senate</p> <p>16 in 2009?</p> <p>17 A. I believe, yes.</p> <p>18 Q. Do you recall the number?</p> <p>19 A. No.</p> <p>20 Q. Could you mark this US 29?</p> <p>21 (Exhibit No. 29 was marked.)</p> <p>22 Q. (By MS. WESTFALL) You've been handed what's been</p> <p>23 previously marked as US 29, do you recognize this</p> <p>24 document?</p> <p>25 A. It's Senate Bill 362 from the 2009 session.</p>



<p style="text-align: center;">185</p> <p>1 Q. Who authored this bill? 2 A. Senators Fraser, Estes, Nelson, and Nichols. 3 Q. Could you please review this bill, particularly 4 the forms of allowable ID and let me know when you've 5 had a chance to do so. 6 A. Okay. 7 Q. What forms of ID are allowable under Senate Bill 8 362. 9 MR. SWEETEN: You're asking on the Texas 10 statute. 11 MS. WESTFALL: On the Texas statute. 12 MR. SWEETEN: I'll let you answer. 13 A. On Section 630101 it lists a driver's license or 14 ID card issued by DPS, military ID citizenship 15 certificate with a photograph, passport, concealed 16 handgun license, photo ID issued by the federal 17 government or a State entity. And then there's a list 18 of non-photo IDs. 19 BY MS. WESTFALL: 20 Q. Can you compare Senate Bill 362 with House Bill 21 218 and let me know whether there are changes in the 22 forms of allowable ID based on the Texas bill? 23 MR. SWEETEN: That's fine. I'm going to 24 allow him to compare the text of the bill, but as far as 25 whys or mental impressions about those differences, he</p>	<p style="text-align: center;">187</p> <p>1 legislative agenda for 2009? 2 MR. SWEETEN: You can reveal matters that 3 are public or on the public record as to his legislative 4 agenda. Don't reveal conversations you've had with the 5 other enumerated individuals or entities we talked 6 about. 7 A. I don't recall if it was part of some sort of 8 public pronouncement of his priorities. 9 Q. (By MS. WESTFALL) And you handled his State 10 Affairs Committee issues in 2009; is that correct? 11 A. Correct. 12 Q. And you testified earlier that subject matter 13 experts within the office who handled issues would 14 contribute to the Lieutenant Governor's agenda; did you 15 not? 16 A. Yes. We would be asked are those some of the 17 things that we should be talking about this session. 18 Q. Do you recall having recommended or -- strike 19 that. 20 Do you recall any conversations about inclusion 21 of photo ID in the Lieutenant Governor's agenda for 22 2009? 23 MR. SWEETEN: Don't reveal any conversations 24 that you had with the Lieutenant Governor or the 25 legislatures.</p>
<p style="text-align: center;">186</p> <p>1 won't answer those questions. As those matters are 2 legislatively privileged. 3 A. It looks like 362 does not include employee 4 identification card as a photo? 5 Q. (By MS. WESTFALL) Yes. Anything else? 6 A. I'm looking. Looks like they're otherwise the 7 same. 8 Q. Do you recall earlier you testified that student 9 IDs were included in HB 218; is that right? 10 A. Yes. 11 Q. Does it appear that they -- in Senate Bill 362 12 they are not expressly provided for? 13 A. I do not see it on the list. 14 Q. Would you construe valid ID cards issued by 15 agency institution or local subdivision of the State, 16 any of the that language to include State college and 17 university issued IDs or no? 18 A. In looking at the face of the bill, an agency 19 institution or subdivision of the state, arguably could 20 include state universities. 21 Q. I believe you testified that Senate Bill 326 also 22 includes the use of two forms of non-photo ID; is this 23 right? 24 A. Yes. Subsection B. 25 Q. Was photo ID a part of the Lieutenant Governor's</p>	<p style="text-align: center;">188</p> <p>1 A. I don't recall. 2 Q. (By MS. WESTFALL) Are you -- is this based on -- 3 in part on advice of council? 4 A. Yes. 5 Q. Were you or anyone in the Lieutenant Governor's 6 office involved in the development or drafting of Senate 7 Bill 362? 8 MR. SWEETEN: Objection. The question is 9 vague. As you're answering the question be mindful that 10 the legislative privilege prohibits you -- or the scope 11 of the privilege does not require you to reveal 12 thoughts, mental impressions, about a bill or 13 conversations you had with respect to that. So you can 14 answer the question to the extent you're not revealing 15 matters of legislative privilege. 16 A. So the question was, was the Lieutenant 17 Governor's staff involved in the drafting of Senate Bill 18 326. 19 Q. (By MS. WESTFALL) Or the development? 20 MR. SWEETEN: Objection compound. Same 21 instruction. 22 A. Yes. 23 Q. (By MS. WESTFALL) Who was involved in the 24 development or drafting of Senate Bill 326? 25 MR. SWEETEN: Objection, compound.</p>



<p style="text-align: center;">189</p> <p>1 A. Myself.</p> <p>2 Q. (By MS. WESTFALL) Can you think of anyone else</p> <p>3 or was it solely you?</p> <p>4 A. I'm the only one I know for sure. Me is the only</p> <p>5 answer I can say yes. It's possible other people were.</p> <p>6 Q. Can you identify the time -- strike that.</p> <p>7 Was there -- were there any conversations about</p> <p>8 the development or drafting of the Senate Bill 362?</p> <p>9 MR. SWEETEN: Objection, compound. You can</p> <p>10 answer whether or not a communication -- such</p> <p>11 communication occurred. Do not reveal the substance of</p> <p>12 any communications.</p> <p>13 A. Yes.</p> <p>14 Q. (By MS. WESTFALL) When did the first</p> <p>15 conversation occur?</p> <p>16 A. I don't recall the first conversation.</p> <p>17 Q. Did it occur sometime shortly after House Bill</p> <p>18 218 failed to pass?</p> <p>19 A. I don't recall.</p> <p>20 Q. Who else was involved in that conversation?</p> <p>21 MR. SWEETEN: You can answer.</p> <p>22 A. I'm sure I would have talked about this generally</p> <p>23 with our policy director and chief of staff so Julia</p> <p>24 Rathgeber, Blaine Brunson.</p> <p>25 Q. (By MS. WESTFALL) Do you recall what year it</p>	<p style="text-align: center;">191</p> <p>1 involved at some point, in some draft or amendment, but</p> <p>2 I'm not sure.</p> <p>3 Q. Was Senator Fraser's staff involved in the</p> <p>4 drafting of Senate Bill 362?</p> <p>5 A. Yes.</p> <p>6 MR. SWEETEN: Objection, vague.</p> <p>7 Q. (By MS. WESTFALL) Was that Janice McCoy?</p> <p>8 A. Yes.</p> <p>9 Q. Were any other staff or Senators involved in the</p> <p>10 drafting of Senate Bill 362?</p> <p>11 MR. SWEETEN: You can answer if they were</p> <p>12 involved in the drafting. Don't reveal the specific</p> <p>13 communications you had.</p> <p>14 A. It could be that possibly Ginger Fagan is a</p> <p>15 lawyer I trust, but is also someone from the State</p> <p>16 Affairs Committee.</p> <p>17 Q. Anyone else?</p> <p>18 A. I can't recall names. Again, I'm sure I</p> <p>19 discussed this with lots of people around the capital,</p> <p>20 but I don't have a list.</p> <p>21 Q. Senator --</p> <p>22 A. Sorry. If your question is development of the</p> <p>23 draft, I think that's probably the list.</p> <p>24 Q. Thank you for your testimony.</p> <p>25 Senator Fraser testified that in essence, he</p>
<p style="text-align: center;">190</p> <p>1 occurred in?</p> <p>2 A. It was supposed to be '09 session it probably</p> <p>3 would have been '08.</p> <p>4 Q. Do you think it was in the second half of the</p> <p>5 year?</p> <p>6 A. I don't recall. I can't remember. There may</p> <p>7 have been an interim charge in the '07, '08 year that</p> <p>8 addressed these issues that may have come up in that</p> <p>9 context.</p> <p>10 Q. Were you primarily responsible for developing</p> <p>11 Senate bill 362?</p> <p>12 MR. SWEETEN: In answering that question</p> <p>13 don't reveal your thoughts, mental processes, your</p> <p>14 conversations that you've had with individuals in</p> <p>15 answering that question. I'm also going to object to</p> <p>16 the question as vague.</p> <p>17 A. No. I was not primarily responsible for</p> <p>18 developing the draft the bill.</p> <p>19 Q. (By MS. WESTFALL) Was the Legislative Council</p> <p>20 also involved in drafting the bill?</p> <p>21 A. I don't recall. Usually there would be a number</p> <p>22 or letter at the bottom here if it was a formal</p> <p>23 council -- was it a council draft. I don't know what</p> <p>24 version this was. It could be that -- I'm almost</p> <p>25 certain that Legislative Council would have been</p>	<p style="text-align: center;">192</p> <p>1 testified in a deposition in this case. In essence he</p> <p>2 took House Bill 218 and filed it in the following</p> <p>3 session more or less the same. Do you agree with that</p> <p>4 assessment?</p> <p>5 A. Do I agree that 218 is essentially the same as</p> <p>6 Senate Bill -- House Bill 218 is the same as Senate Bill</p> <p>7 362?</p> <p>8 Q. Yes, that's part of the question. Based on the</p> <p>9 face of the statute?</p> <p>10 MR. SWEETEN: You can answers.</p> <p>11 A. Looking at them now there are some similarities.</p> <p>12 And it looks like, I mean, starting with the very first</p> <p>13 page there are also some differences. I mean, but</p> <p>14 they're substantially similar I suppose. They're both</p> <p>15 proof of identification.</p> <p>16 Q. And is it true that Senator Fraser was the one</p> <p>17 who re-crafted the bill or would you say that you played</p> <p>18 more of a role?</p> <p>19 MR. SWEETEN: Objection to the term</p> <p>20 re-crafted, vague. Are you talking about the text --</p> <p>21 who filed the -- I mean, you can answer as to that if</p> <p>22 you know.</p> <p>23 A. I cannot recall how much specific input I had on</p> <p>24 this draft of this bill.</p> <p>25 Q. (By MS. WESTFALL) On this bill?</p>
<p style="text-align: center;">189</p> <p>1 A. Myself.</p> <p>2 Q. (By MS. WESTFALL) Can you think of anyone else</p> <p>3 or was it solely you?</p> <p>4 A. I'm the only one I know for sure. Me is the only</p> <p>5 answer I can say yes. It's possible other people were.</p> <p>6 Q. Can you identify the time -- strike that.</p> <p>7 Was there -- were there any conversations about</p> <p>8 the development or drafting of the Senate Bill 362?</p> <p>9 MR. SWEETEN: Objection, compound. You can</p> <p>10 answer whether or not a communication -- such</p> <p>11 communication occurred. Do not reveal the substance of</p> <p>12 any communications.</p> <p>13 A. Yes.</p> <p>14 Q. (By MS. WESTFALL) When did the first</p> <p>15 conversation occur?</p> <p>16 A. I don't recall the first conversation.</p> <p>17 Q. Did it occur sometime shortly after House Bill</p> <p>18 218 failed to pass?</p> <p>19 A. I don't recall.</p> <p>20 Q. Who else was involved in that conversation?</p> <p>21 MR. SWEETEN: You can answer.</p> <p>22 A. I'm sure I would have talked about this generally</p> <p>23 with our policy director and chief of staff so Julia</p> <p>24 Rathgeber, Blaine Brunson.</p> <p>25 Q. (By MS. WESTFALL) Do you recall what year it</p>	<p style="text-align: center;">191</p> <p>1 involved at some point, in some draft or amendment, but</p> <p>2 I'm not sure.</p> <p>3 Q. Was Senator Fraser's staff involved in the</p> <p>4 drafting of Senate Bill 362?</p> <p>5 A. Yes.</p> <p>6 MR. SWEETEN: Objection, vague.</p> <p>7 Q. (By MS. WESTFALL) Was that Janice McCoy?</p> <p>8 A. Yes.</p> <p>9 Q. Were any other staff or Senators involved in the</p> <p>10 drafting of Senate Bill 362?</p> <p>11 MR. SWEETEN: You can answer if they were</p> <p>12 involved in the drafting. Don't reveal the specific</p> <p>13 communications you had.</p> <p>14 A. It could be that possibly Ginger Fagan is a</p> <p>15 lawyer I trust, but is also someone from the State</p> <p>16 Affairs Committee.</p> <p>17 Q. Anyone else?</p> <p>18 A. I can't recall names. Again, I'm sure I</p> <p>19 discussed this with lots of people around the capital,</p> <p>20 but I don't have a list.</p> <p>21 Q. Senator --</p> <p>22 A. Sorry. If your question is development of the</p> <p>23 draft, I think that's probably the list.</p> <p>24 Q. Thank you for your testimony.</p> <p>25 Senator Fraser testified that in essence, he</p>
<p style="text-align: center;">190</p> <p>1 occurred in?</p> <p>2 A. It was supposed to be '09 session it probably</p> <p>3 would have been '08.</p> <p>4 Q. Do you think it was in the second half of the</p> <p>5 year?</p> <p>6 A. I don't recall. I can't remember. There may</p> <p>7 have been an interim charge in the '07, '08 year that</p> <p>8 addressed these issues that may have come up in that</p> <p>9 context.</p> <p>10 Q. Were you primarily responsible for developing</p> <p>11 Senate bill 362?</p> <p>12 MR. SWEETEN: In answering that question</p> <p>13 don't reveal your thoughts, mental processes, your</p> <p>14 conversations that you've had with individuals in</p> <p>15 answering that question. I'm also going to object to</p> <p>16 the question as vague.</p> <p>17 A. No. I was not primarily responsible for</p> <p>18 developing the draft the bill.</p> <p>19 Q. (By MS. WESTFALL) Was the Legislative Council</p> <p>20 also involved in drafting the bill?</p> <p>21 A. I don't recall. Usually there would be a number</p> <p>22 or letter at the bottom here if it was a formal</p> <p>23 council -- was it a council draft. I don't know what</p> <p>24 version this was. It could be that -- I'm almost</p> <p>25 certain that Legislative Council would have been</p>	<p style="text-align: center;">192</p> <p>1 testified in a deposition in this case. In essence he</p> <p>2 took House Bill 218 and filed it in the following</p> <p>3 session more or less the same. Do you agree with that</p> <p>4 assessment?</p> <p>5 A. Do I agree that 218 is essentially the same as</p> <p>6 Senate Bill -- House Bill 218 is the same as Senate Bill</p> <p>7 362?</p> <p>8 Q. Yes, that's part of the question. Based on the</p> <p>9 face of the statute?</p> <p>10 MR. SWEETEN: You can answers.</p> <p>11 A. Looking at them now there are some similarities.</p> <p>12 And it looks like, I mean, starting with the very first</p> <p>13 page there are also some differences. I mean, but</p> <p>14 they're substantially similar I suppose. They're both</p> <p>15 proof of identification.</p> <p>16 Q. And is it true that Senator Fraser was the one</p> <p>17 who re-crafted the bill or would you say that you played</p> <p>18 more of a role?</p> <p>19 MR. SWEETEN: Objection to the term</p> <p>20 re-crafted, vague. Are you talking about the text --</p> <p>21 who filed the -- I mean, you can answer as to that if</p> <p>22 you know.</p> <p>23 A. I cannot recall how much specific input I had on</p> <p>24 this draft of this bill.</p> <p>25 Q. (By MS. WESTFALL) On this bill?</p>



<p style="text-align: center;">193</p> <p>1 A. Correct.</p> <p>2 Q. 362? But it essentially was developed and</p> <p>3 created by yourself, Ms. McCoy, and Ms. Fagan; is that</p> <p>4 correct?</p> <p>5 A. I think I would say it was developed.</p> <p>6 MR. SWEETEN: Hold on a minute. The term</p> <p>7 developed -- do not answer a question as to the mental</p> <p>8 impression, thoughts that occurred with respect to the</p> <p>9 legislative the conversations that you've had with these</p> <p>10 individuals. So to the extent that she's asking you</p> <p>11 whether conversations occurred you can answer. To the</p> <p>12 extent she's asking about whether someone did a draft</p> <p>13 you can answer, but don't talk about the matters that be</p> <p>14 covered by legislative privilege.</p> <p>15 Q. (By MS. WESTFALL) Can you answer my question?</p> <p>16 A. I'll exercise my privilege.</p> <p>17 Q. Other than House Bill 218, are you aware of any</p> <p>18 other sources of legislative language or -- I guess</p> <p>19 legislative language that provided the basis of Senate</p> <p>20 Bill 362?</p> <p>21 MR. SWEETEN: In answering the question</p> <p>22 don't reveal thoughts, mental impressions, or opinions</p> <p>23 about legislation or furtherance of the legislative</p> <p>24 process. You can answer to the extent that you can do</p> <p>25 so without revealing.</p>	<p style="text-align: center;">195</p> <p>1 A. I don't recall.</p> <p>2 Q. Would anyone else know the answer to that</p> <p>3 question?</p> <p>4 MR. SWEETEN: Objection, calls for</p> <p>5 speculation.</p> <p>6 Q. (By MS. WESTFALL) You may answer it?</p> <p>7 A. As I said before, the chief of staff and the</p> <p>8 policy director would possibly have had -- I didn't have</p> <p>9 that conversation.</p> <p>10 Q. And Mr. Dewhurst himself would certainly know</p> <p>11 whether he was involved in those conversations, would he</p> <p>12 not?</p> <p>13 A. I don't know. I guess.</p> <p>14 Q. Are you aware of any conversations concerning the</p> <p>15 analysis of the impact of Senate bill 362 on minority</p> <p>16 voters?</p> <p>17 MR. SWEETEN: Don't answer the question.</p> <p>18 The question -- the preface of the question asks for the</p> <p>19 particular subject matter. So as phrased I'm going to</p> <p>20 object that it calls for matters that are subject to</p> <p>21 legislative privilege and instruct not to answer.</p> <p>22 Q. (By MS. WESTFALL) Are you going to follow the</p> <p>23 advice of council?</p> <p>24 A. Yes.</p> <p>25 Q. If Senate Bill 362 had been passed, which it</p>
<p style="text-align: center;">194</p> <p>1 A. I don't recall and/or don't know the source of</p> <p>2 all the language in 362.</p> <p>3 Q. (By MS. WESTFALL) Are you aware of any</p> <p>4 conversations concerning any other additional forms of</p> <p>5 ID that were contemplated with regard to Senate Bill</p> <p>6 362?</p> <p>7 MR. SWEETEN: You can answer whether or not</p> <p>8 a communication occurred.</p> <p>9 A. Yes, communications occurred about forms of ID.</p> <p>10 Q. (By MS. WESTFALL) How many such conversations</p> <p>11 occurred?</p> <p>12 MR. SWEETEN: You can answer.</p> <p>13 A. I think it was an ongoing part of the bill.</p> <p>14 Several.</p> <p>15 Q. (By MS. WESTFALL) Were they between you and</p> <p>16 Ms. Fagan and Ms. McCoy?</p> <p>17 A. Probably.</p> <p>18 Q. Are you aware of any conversations involving</p> <p>19 Mr. Dewhurst on that topic?</p> <p>20 MR. SWEETEN: You can reveal whether a</p> <p>21 conversation occurred. Don't reveal the substance of</p> <p>22 the conversation.</p> <p>23 A. So 2009 was Governor Dewhurst involved in any</p> <p>24 discussions about the forms of identification?</p> <p>25 Q. (By MS. WESTFALL) Correct.</p>	<p style="text-align: center;">196</p> <p>1 wasn't, correct?</p> <p>2 A. Correct.</p> <p>3 Q. It would have been subject to the requirements of</p> <p>4 Section 5, right?</p> <p>5 A. Correct.</p> <p>6 Q. Are you aware of any conversations involving</p> <p>7 staff being directed not to conduct analysis of the</p> <p>8 impact of Senate Bill 362 on minority voters?</p> <p>9 MR. SWEETEN: Don't answer the question.</p> <p>10 The question assumes the subject matter and it's calling</p> <p>11 for matters that are subject to the legislative</p> <p>12 privilege. You can reveal if you had conversations</p> <p>13 about general subject matter and with whom the</p> <p>14 conversations occurred and approximately when and the</p> <p>15 means.</p> <p>16 Q. (By MS. WESTFALL) Do you have any testimony?</p> <p>17 MR. SWEETEN: But as phrased she's asking</p> <p>18 for the subject matter of the conversations, so my</p> <p>19 instruction would be not to answer the question as</p> <p>20 phrased.</p> <p>21 Q. (By MS. WESTFALL) Based on advice of council --</p> <p>22 A. Correct.</p> <p>23 Q. -- you are asserting your privilege?</p> <p>24 Okay. Are you familiar with the concept of</p> <p>25 Spanish surname voter registration?</p>



<p style="text-align: center;">197</p> <p>1 MR. SWEETEN: If answering the question 2 would require you to reveal your thoughts, mental 3 impressions, opinions, about legislation or discussions 4 you've had about legislation, the legislators, Governor 5 Dewhurst, with other members of the Lieutenant 6 Governor's office, legislative staff, State agencies or 7 Texas Legislative Council. Do not reveal those as those 8 are legislatively privileged.</p> <p>9 A. I'm just generally aware of it from redistricting 10 conversations and other matters.</p> <p>11 Q. (By MS. WESTFALL) Did you hear about any 12 conversations related to an analysis of whether Spanish 13 surname voter registrations were more or less likely to 14 have the necessary photo ID under Senate Bill 362?</p> <p>15 MR. SWEETEN: Don't answer the question. It 16 calls for matters that are subject to legislative 17 privilege. If Council wants to rephrase it as to 18 conversations that are not in that particular, I will 19 allow him to answer.</p> <p>20 Q. (By MS. WESTFALL) Are you following the advice 21 of council?</p> <p>22 A. Yes.</p> <p>23 Q. Are you aware of any conversations related to 24 Spanish surname voter registration and Senate Bill 362?</p> <p>25 MR. SWEETEN: I'll let you answer the</p>	<p style="text-align: center;">199</p> <p>1 your council made an objection which created a different 2 question that is different from what I just asked. So 3 I'm going to re-ask the question if it's okay.</p> <p>4 Outside of communications between the Lieutenant 5 Governor's office and Senator Fraser's office, are you 6 aware of the existence of any other communication's 7 regarding the development or drafting of Senate Bill 8 362?</p> <p>9 MR. SWEETEN: Objection, compound. You can 10 answer.</p> <p>11 A. I'm not aware of it.</p> <p>12 Q. (By MS. WESTFALL) In your opinion, based on your 13 experience handling election law bills and drafting, 14 being a lawyer as you testified earlier today, sitting 15 here today after Crawford, do you believe that States 16 covered by Section 5 of the Voting Rights Act need not 17 conduct an analysis of the impact of photo voter ID laws 18 on minority voters.</p> <p>19 MR. SWEETEN: You're asking him to reveal 20 his thoughts, mental impressions, opinions, about 21 legislation. I'm going to instruct you not to answer. 22 That matter is subject to legislative privilege.</p> <p>23 Q. (By MS. WESTFALL) Are you going to follow the 24 advice of council?</p> <p>25 A. Yes.</p>
<p style="text-align: center;">198</p> <p>1 question as phrased. Don't reveal the substance of the 2 conversation.</p> <p>3 A. I don't recall.</p> <p>4 Q. (By MS. WESTFALL) Were you in touch with Janice 5 McCoy on a near daily basis during consideration of 6 Senate Bill 362?</p> <p>7 A. Probably.</p> <p>8 Q. Outside of the communications between Lieutenant 9 Governor's office and Senate Fraser's office that you 10 just testified to, to which Jennifer Fagan may have been 11 a party, are you aware of any other communications 12 regarding the development with drafting Senate Bill 362?</p> <p>13 MR. SWEETEN: Objection, as vague, compound, 14 assumes facts not in evidence.</p> <p>15 Q. (By MS. WESTFALL) You may answer.</p> <p>16 A. Yeah.</p> <p>17 MR. SWEETEN: Don't reveal the substance of 18 conversations, those would be matters of legislative 19 privilege. If she's asking you about conversations you 20 can answer it to the extent you can.</p> <p>21 A. I don't have any firsthand knowledge of what 22 other people were talking about.</p> <p>23 Q. (By MS. WESTFALL) I wasn't asking about the 24 substance of the communication. I was asking about your 25 knowledge of the existence of the communication and then</p>	<p style="text-align: center;">200</p> <p>1 Q. What was the purpose or purposes of Senate Bill 2 362?</p> <p>3 A. This bill, like the ones that you've shown me 4 before, are intended to improve the integrity of the 5 election system in Texas and instill confidence in the 6 electoral.</p> <p>7 Q. So improve integrity of the elections and the 8 second one was instill confidence?</p> <p>9 A. Correct.</p> <p>10 Q. Anything else?</p> <p>11 A. Again, any -- I suppose any given sponsor of a 12 bill and amendment could have a different purpose or 13 intent.</p> <p>14 Q. But those are your understandings of the purposes 15 sitting here today; is that correct?</p> <p>16 A. Yes.</p> <p>17 Q. Senator Fraser testified in deposition in this 18 case that before he filed Senate Bill 362 he gave notice 19 to the Lieutenant Governor; is that accurate?</p> <p>20 A. He gave notice --</p> <p>21 Q. That he was going to file; is that correct?</p> <p>22 A. I don't recall.</p> <p>23 Q. Are you aware of such communication?</p> <p>24 MR. SWEETEN: Objection, asked and answered.</p> <p>25 A. No.</p>



<p style="text-align: center;">201</p> <p>1 Q. (By MS. WESTFALL) Senator Fraser also testified 2 at deposition that he had an in-person meeting with 3 Mr. Dewhurst in his office regarding allowing non-photo 4 ID in Senate Bill 362. Are you aware of that meeting?</p> <p>5 MR. SWEETEN: Objection, assumes facts not 6 in evidence. You can answer.</p> <p>7 A. I don't recall a meeting. I guess I'm not aware 8 of a meeting.</p> <p>9 Q. (By MS. WESTFALL) And you were the person who 10 was developing and drafting the bill as you testified 11 to, correct?</p> <p>12 MR. SWEETEN: Objection to the form. 13 Objection, compound. You can answer.</p> <p>14 A. I was a person.</p> <p>15 Q. (By MS. WESTFALL) Was Senate Bill 362, was it's 16 purpose to in terms of improving the integrity of 17 elections, did that relate to in-person voter 18 impersonation?</p> <p>19 MR. SWEETEN: You can testify as to the 20 purpose of the legislation. Other than that, don't 21 reveal matters that are subject to legislative privilege 22 including your thoughts, mental impressions, about 23 legislation.</p> <p>24 A. Again, looking at the draft, certainly whether or 25 not a person has an acceptable ID when they show up to</p>	<p style="text-align: center;">203</p> <p>1 MR. SWEETEN: Don't reveal.</p> <p>2</p> <p>3 Q. (By MS. WESTFALL) Based on the face of the 4 statute?</p> <p>5 MR. SWEETEN: Okay. I'm going to let you 6 answer based upon the text of the statute. When 7 answering, do not reveal your thoughts, mental 8 impressions about legislation or furtherance of the 9 legislation process or communications that you've had 10 that I've already previously enumerated, okay?</p> <p>11 A. The Bill 362 adds a level of security to the 12 voting process and presumably a level of security makes 13 people feel more secure.</p> <p>14 Q. (By MS. WESTFALL) Okay. But in terms of the 15 type of harm that it's targeting, based on the face of 16 the statute, it's not mail inverter fraud of mail in 17 ballots; is that right?</p> <p>18 MR. SWEETEN: You can limit your answer to 19 what is on the text of the statute. Do not reveal your 20 mental impressions or thoughts about legislation in 21 doing so.</p> <p>22 A. Right. This bill in front of me does not address 23 mail in ballots. Without me looking at it one more 24 time.</p> <p>25 Q. (By MS. WESTFALL) And it does not address fraud</p>
<p style="text-align: center;">202</p> <p>1 vote is part of that bill.</p> <p>2 Q. (By MS. WESTFALL) And that would be targeted 3 towards in-person voter impersonation, correct?</p> <p>4 MR. SWEETEN: Objection, asked and answered.</p> <p>5 Objection, to the extent it asks him to reveal matters 6 that are subject to legislative privilege which includes 7 mental impressions or opinions about the conversation.</p> <p>8 Q. (By MS. WESTFALL) Based on the face of this 9 statute?</p> <p>10 A. Right. It says a voter who when offering to vote 11 presents documentation, et cetera, et cetera, so, yes.</p> <p>12 Q. And to clarify your testimony, Senate Bill 362 13 was targeted towards ensuring that in-person voter 14 impersonation would not occur; is that right?</p> <p>15 MR. SWEETEN: Objection, asked and answered.</p> <p>16 Objection, to the extent that you're asking him to go 17 beyond the purpose. He's expressed what the purpose is.</p> <p>18 You're asking matters that are subject to legislative 19 privilege.</p> <p>20 A. Again, the document on its face in-person voter 21 fraud is part of what it appears to be designed to 22 combat.</p> <p>23 Q. (By MS. WESTFALL) How would Senate Bill 362 24 preserve the integrity of elections in any other way 25 than deterring in-person voter impersonation?</p>	<p style="text-align: center;">204</p> <p>1 that might occur at the voter registration stage; is 2 that correct?</p> <p>3 MR. SWEETEN: Same instruction. Same 4 objection.</p> <p>5 A. This Bill 362 does not directly address, doesn't 6 appear to.</p> <p>7 Q. (By MS. WESTFALL) What is the basis for your 8 testimony that you believe it would deter people from 9 fraudulently registering to vote?</p> <p>10 MR. SWEETEN: In answering the question, 11 don't reveal your thoughts, your mental impressions, 12 your opinions about the legislation. I've let you 13 answer as to the purpose of it. I think that that can 14 be answered, but don't reveal your thoughts, mental 15 impressions, or communications that we've discussed 16 earlier.</p> <p>17 A. So the question is what is -- how does 362 --</p> <p>18 Q. (By MS. WESTFALL) Deter --</p> <p>19 A. -- deter fraudulent conduct?</p> <p>20 Q. I believe you testified earlier today that you 21 were of the view that one of the purposes of HB 218 22 would be to deter fraudulent voter registration; is that 23 correct?</p> <p>24 A. I believe so.</p> <p>25 Q. And would you testify that with regard to SB 362,</p>



<p style="text-align: center;">205</p> <p>1 that it would likewise deter fraudulent voter 2 registration?</p> <p>3 MR. SWEETEN: Same objection and 4 instruction.</p> <p>5 A. Sure. Just looking at the draft, I think it has 6 that potential.</p> <p>7 Q. (By MS. WESTFALL) What's the basis for you 8 saying that based on the statute?</p> <p>9 MR. SWEETEN: You can testify --</p> <p>10 Q. (By MS. WESTFALL) And the structure of the 11 election code?</p> <p>12 MR. SWEETEN: You can testify as to the 13 specific text of the Bill. Do not reveal your thoughts, 14 mental impressions, or opinions about legislation that 15 is legislatively privileged. You've asserted your 16 privilege and that would be beyond the bounds of that 17 privilege.</p> <p>18 A. So what is the question.</p> <p>19 Q. (By MS. WESTFALL) I was just asking based on 20 your understanding of the election code and Senate Bill 21 362, how Senate Bill 362 would deter fraudulent voter 22 registration?</p> <p>23 MR. SWEETEN: Same instruction as to 24 legislative privilege, objection.</p> <p>25 A. I just think generally this Bill appears to deter</p>	<p style="text-align: center;">207</p> <p>1 system more secure?</p> <p>2 MR. SWEETEN: Same objection, same 3 instruction.</p> <p>4 Q. (By MS. WESTFALL) Do you have any testimony?</p> <p>5 A. No.</p> <p>6 Q. Are you aware of any conversations about two 7 forms of non-photo ID making the system more secure?</p> <p>8 A. Two forms of --</p> <p>9 Q. Non-photo ID.</p> <p>10 A. -- non-photo ID making it more secure?</p> <p>11 Q. Yes?</p> <p>12 A. More secure than what.</p> <p>13 Q. The status quo?</p> <p>14 MR. SWEETEN: You can testify as to a 15 general description of subject matter of a conversation, 16 whether conversations occurred. Don't reveal any 17 substance of communications.</p> <p>18 A. Yes.</p> <p>19 Q. (By MS. WESTFALL) When did that conversation 20 occur?</p> <p>21 A. I think it would have been simultaneous with the 22 development of this draft, this bill.</p> <p>23 Q. Is this the conversation you already testified to 24 previously?</p> <p>25 A. Maybe? Which conversation?</p>
<p style="text-align: center;">206</p> <p>1 fraudulent activity and if it requires a person to 2 commit several forms of fraud, maybe that makes it less 3 likely that a fraud will occur.</p> <p>4 Q. (By MS. WESTFALL) Do you have any further 5 testimony or explanation as to the basis of your 6 conclusion?</p> <p>7 A. No.</p> <p>8 Q. That Senate Bill 362 would deter fraudulent voter 9 registration, other than what you just testified to?</p> <p>10 A. No.</p> <p>11 Q. And I believe that you testified that Senate Bill 12 362 would make the system more secure; is that correct?</p> <p>13 MR. SWEETEN: Don't -- I object based on 14 legislative privilege. Don't reveal your thoughts, 15 mental impressions, opinions about the legislation. 16 It's legislatively privileged. Or the communications 17 that you had with the enumerated entities or individuals 18 we've been discussing.</p> <p>19 Q. (By MS. WESTFALL) Do you have any testimony in 20 response to my question?</p> <p>21 A. No.</p> <p>22 Q. Are you following your counsel's advice on 23 privilege?</p> <p>24 A. Yes.</p> <p>25 Q. Would showing two forms of non-photo ID make the</p>	<p style="text-align: center;">208</p> <p>1 Q. Without discussing the subject matter it's hard 2 for me to refer to previous testimony that you've given, 3 but when did this conversation occur?</p> <p>4 A. It would have been, again, probably 2008, 2009.</p> <p>5 Q. Were you a party to the conversation?</p> <p>6 A. I was party to conversations, yes.</p> <p>7 Q. And who else was a party to the conversation?</p> <p>8 A. Probably Janice McCoy, possibly Julia Rathgeber, 9 possibly Senator Fraser.</p> <p>10 Q. Was Mr. Dewhurst a party to any of these 11 conversations?</p> <p>12 A. Not that I recall.</p> <p>13 Q. How many conversations did you have involving the 14 use of non-photo ID?</p> <p>15 MR. SWEETEN: You can answer.</p> <p>16 A. In 2009. Some, I think -- some.</p> <p>17 Q. (By MS. WESTFALL) Were these conversations in 18 person?</p> <p>19 A. I think, probably, yes.</p> <p>20 Q. Were any of these in writing?</p> <p>21 A. Not that I recall.</p> <p>22 Q. Was there any e-mail on this topic in 2008 or '9?</p> <p>23 A. There might have been, but I don't recall.</p> <p>24 Q. Would it have been between you and Ms. McCoy?</p> <p>25 A. Probably.</p>



<p style="text-align: center;">209</p> <p>1 Q. Do you recall any communications with legislators 2 who opposed Senate Bill 362?</p> <p>3 A. In 2009 on Senate Bill 362? I can't recall.</p> <p>4 Q. Would you have been at those meetings had the 5 been held since you were the staff person who handled 6 the bill?</p> <p>7 MR. SWEETEN: Objection, calls for 8 speculation.</p> <p>9 A. I don't know if I would have been at every 10 meeting.</p> <p>11 Q. (By MS. WESTFALL) Would you have generally have 12 had a sense in your role as a deputy general counsel for 13 the Lieutenant Governor -- when you handled the bill, 14 would you generally know about meetings with opponents, 15 with supporter, et cetera, to inform you of how to craft 16 the bill to respond to those concerns of supporters?</p> <p>17 MR. SWEETEN: Objection, the question is 18 vague. Objection, form.</p> <p>19 A. I can't say that I was aware of every meeting 20 about Senate Bill 362.</p> <p>21 Q. (By MS. WESTFALL) Do you think you were aware of 22 most of the meetings --</p> <p>23 MR. SWEETEN: Objection, alls for 24 speculation.</p> <p>25 Q. (By MS. WESTFALL) -- that Lieutenant Governor had</p>	<p style="text-align: center;">211</p> <p>1 MR. SWEETEN: Hold on a minute. When you're 2 answering the question don't reveal communications you 3 had with Senators or legislators or legislative staff. 4 So to the extent you can refer to matters of the public 5 record, do not reveal those matters, you can do to so.</p> <p>6 A. My memory from the Committee hearing is that 7 Senator Van de Putte, Senator West, Senator Gallegos, 8 Senator Watson, opposed the bill and there may have been 9 others.</p> <p>10 Q. (By MS. WESTFALL) Can you identify based on your 11 review of Senate Bill 362, any parts of the bill that 12 were changed in response to those concerns by the bills 13 opponents?</p> <p>14 MR. SWEETEN: That question asks you to 15 reveal matters that are legislatively privileged, 16 specifically it requires you to reveal thoughts, mental 17 impressions about legislation. It also would ask you to 18 reveal communications between legislatures, legislative 19 staff, State agencies, Texas Leg. Council, so you can 20 answer as to matters of the public record, but do not 21 answer to the extent that it would invade legislative 22 privilege.</p> <p>23 A. Right. I don't recall from the public record if 24 there were amendments or specific debate that resulted 25 in changes.</p>
<p style="text-align: center;">210</p> <p>1 regarding that subject?</p> <p>2 MR. SWEETEN: Objection, calls for 3 speculation.</p> <p>4 A. I don't know.</p> <p>5 Q. (By MS. WESTFALL) Was it your impression that 6 you were kept in the dark as you were drafting Senate 7 Bill 362 about communications about the very topic 8 that -- and very bill that you were drafting?</p> <p>9 MR. SWEETEN: Objection, speculation.</p> <p>10 Objection, argumentative. Go ahead.</p> <p>11 Q. (By MS. WESTFALL) You may answer.</p> <p>12 A. Again, I was a person working on the draft.</p> <p>13 Q. I believe your testimony earlier was that you 14 were -- the Lieutenant Governor's office you were the 15 central person, the main person?</p> <p>16 A. Correct. And he's not a sponsor.</p> <p>17 Q. He's not a sponsor, but you were the one handling 18 it for the Lieutenant Governor's office, right?</p> <p>19 A. Correct.</p> <p>20 Q. Who were the main opponents to Senate Bill 362?</p> <p>21 A. I would have to go back and look at the record of 22 the hearing.</p> <p>23 Q. Can you not think of any opponents to the bill 24 right now, either within the legislature or outside?</p> <p>25 A. Sure. Senator --</p>	<p style="text-align: center;">212</p> <p>1 Q. (By MS. WESTFALL) And are you following the 2 advice of council in part in that answer?</p> <p>3 A. Yes.</p> <p>4 Q. Did the Lieutenant Governor's office play a role 5 in attempting to secure passage of Senate Bill 362 in 6 the Senate?</p> <p>7 MR. SWEETEN: Objection, that calls for 8 legislatively privileged unless it's asking for matters 9 on the public record which you can answer.</p> <p>10 A. Did Lieutenant Governor attempt to secure passage 11 of SB 362?</p> <p>12 Q. (By MS. WESTFALL) Yes.</p> <p>13 MR. SWEETEN: Don't reveal matters of 14 privilege.</p> <p>15 Q. (By MS. WESTFALL) Do you have any testimony in 16 response?</p> <p>17 A. No.</p> <p>18 Q. Are you relying upon your counsel's advice?</p> <p>19 A. Yes.</p> <p>20 Q. Could you mark this as US 76? 21 (Exhibit No. 76 was marked.)</p> <p>22 Q. (By MS. WESTFALL) I'm handing you what has been 23 marked as US 76. Do you recognize this document?</p> <p>24 MR. SWEETEN: Do I have a copy of that?</p> <p>25 A. Looks like a Dallas morning news article about</p>



<p style="text-align: center;">213</p> <p>1 photo ID, early in session.</p> <p>2 Q. (By MS. WESTFALL) Have you seen this document</p> <p>3 before?</p> <p>4 A. I may have read it, but I don't recall.</p> <p>5 Q. Can you take a look at it, just a few paragraphs</p> <p>6 in where it quotes the Lieutenant Governor?</p> <p>7 A. Okay.</p> <p>8 Q. Have you had a chance to review it?</p> <p>9 A. Uh-huh.</p> <p>10 Q. Could you describe what this article is</p> <p>11 concerning?</p> <p>12 A. It's beginning of session and it talks about how</p> <p>13 voter ID might cause some disagreement in the Senate.</p> <p>14 Q. And it refers to the so-called two-thirds rule;</p> <p>15 is that right?</p> <p>16 A. Yes.</p> <p>17 Q. Can you describe the controversy surrounding the</p> <p>18 two-thirds rule in 2009?</p> <p>19 MR. SWEETEN: You can describe matters of</p> <p>20 public record, don't reveal any communications that</p> <p>21 you've had with legislatures or legislative staff or</p> <p>22 reveal your thoughts, mental impressions, opinions about</p> <p>23 legislation in answering.</p> <p>24 A. Right. I mean, I think, looking at the article</p> <p>25 some bills come to the floor or maybe most bills come to</p>	<p style="text-align: center;">215</p> <p>1 (Exhibit No. 77 was marked.)</p> <p>2 Q. (By MS. WESTFALL) You've been handed what's been</p> <p>3 marked as US 77. Do you recognize this document?</p> <p>4 A. Yes.</p> <p>5 Q. And what is it?</p> <p>6 A. Appears to be a copy of rule 5.11 from the Senate</p> <p>7 rules in 2009.</p> <p>8 Q. Are you familiar with this rule?</p> <p>9 A. Generally.</p> <p>10 Q. Do you know the circumstances under which this</p> <p>11 rule was adopted in 2009?</p> <p>12 MR. SWEETEN: Don't answer any matters that</p> <p>13 would impede legislative privilege. That would be</p> <p>14 thoughts, mental impressions about legislation, that</p> <p>15 would be discussions that you've had with Senators,</p> <p>16 legislative staff, Lieutenant Governor Dewhurst.</p> <p>17 A. The question is, am I aware --</p> <p>18 Q. (By MS. WESTFALL) Are you aware of the</p> <p>19 circumstances under which rule 5.11 was adopted in 2009?</p> <p>20 A. I think I'll assert privilege.</p> <p>21 Q. I'm sorry. You're asserting privilege with</p> <p>22 regard to?</p> <p>23 MR. SWEETEN: The circumstances on which --</p> <p>24 as to the question and I instructed him so.</p> <p>25 Q. (By MS. WESTFALL) What was the purpose of</p>
<p style="text-align: center;">214</p> <p>1 the Senate floor, again, if only -- only if two-thirds</p> <p>2 of the Senate agrees to consider those bills. And so</p> <p>3 there's a disagreement about whether that rule should</p> <p>4 apply to debate over voter ID.</p> <p>5 Q. (By MS. WESTFALL) And do you see that Lieutenant</p> <p>6 Governor Dewhurst is quoted as saying, I don't think the</p> <p>7 two-thirds rule is going to change. Do you see that?</p> <p>8 A. I see that.</p> <p>9 Q. Do you think he said that?</p> <p>10 MR. SWEETEN: Objection, calls for</p> <p>11 speculation.</p> <p>12 A. It's in quotes. I don't recall him saying that.</p> <p>13 Q. (By MS. WESTFALL) Do you believe he expressed</p> <p>14 that sentiment that it wasn't going to change as to this</p> <p>15 day in 2009?</p> <p>16 MR. SWEETEN: Objection, speculation.</p> <p>17 A. Yeah. I don't know. That's what the article</p> <p>18 says.</p> <p>19 Q. (By MS. WESTFALL) Would Mr. Dewhurst be the best</p> <p>20 person to ask that question of?</p> <p>21 A. Or the reporter.</p> <p>22 Q. Are you familiar with the 2009 Senate rules?</p> <p>23 A. Generally.</p> <p>24 Q. Do you remember that -- actually. Hang on.</p> <p>25 Could you mark this as 77?</p>	<p style="text-align: center;">216</p> <p>1 exempting voter ID requirements in rule 5.11?</p> <p>2 MR. SWEETEN: I'm going to object to the</p> <p>3 question. I think you're asking now about specific</p> <p>4 thoughts, mental impressions, opinions about legislation</p> <p>5 and/or communications between legislatures, legislative</p> <p>6 staff.</p> <p>7 MS. WESTFALL: I'm asking about the purpose</p> <p>8 of the Senate rule. My question stands.</p> <p>9 MR. SWEETEN: But the court's ruling related</p> <p>10 to the purpose of the specific voter ID legislation not</p> <p>11 as to specific Senate rules and his understanding of the</p> <p>12 purpose of that.</p> <p>13 MS. WESTFALL: Is it your view that</p> <p>14 questions concerning the purpose of Senate rules or</p> <p>15 other legislation, other than voter ID is something upon</p> <p>16 which you can assert privilege and instruct a witness</p> <p>17 not to answer questions in a deposition.</p> <p>18 MR. SWEETEN: When you're asking him</p> <p>19 questions about why was this rule 5.11 adopted by the</p> <p>20 Senate, you're asking for his subjective impressions as</p> <p>21 to why this bill was included. Therefore, you were</p> <p>22 asking matters that are subject to legislative</p> <p>23 privilege. You're also asking matters that could</p> <p>24 require him to reveal communications he's had with</p> <p>25 legislatures or legislative staff. So I think that's</p>



<p>217</p> <p>1 squarely within the area of privilege.</p> <p>2 MS. WESTFALL: I'm not asking about his</p> <p>3 subjective intent. None of the questions I am asking</p> <p>4 today go to suggesting intent, they go to purpose. What</p> <p>5 was the purpose of the Senate in adopting rule 5.11?</p> <p>6 MR. SWEETEN: Okay. I'll let you answer</p> <p>7 just as to the purpose of 5.11. You can answer that</p> <p>8 question.</p> <p>9 A. When you say purpose you're not asking the</p> <p>10 intent, you're asking what does this do?</p> <p>11 BY MS. WESTFALL:</p> <p>12 Q. Sure. Yes. What does this do?</p> <p>13 A. Rule 5.11 from 2009 appears to say that a bill</p> <p>14 can be considered on the affirmative vote of two-thirds</p> <p>15 of the members, except that voter identification bill</p> <p>16 considered by the Committee of the whole can be set to</p> <p>17 special order 24 hours -- 24 hours notice.</p> <p>18 Q. So is the effect of this rule based on the face</p> <p>19 of the rule, not based on any privileged conversations</p> <p>20 you had; is that it carves out an exemption for voter ID</p> <p>21 in 2009?</p> <p>22 MR. SWEETEN: I'll let you answer as to the</p> <p>23 text.</p> <p>24 A. 5.11 has a general rule and says, notwithstanding</p> <p>25 the general rule there are other criteria for voter</p>	<p>219</p> <p>1 when these rules were adopted. It would have been</p> <p>2 senior staff in my office. Again, Blaine Brunson and</p> <p>3 Julia Rathgeber likely. But I don't have memory of</p> <p>4 specific conversations about this.</p> <p>5 Q. Was it after the rule was adopted or before the</p> <p>6 rule was adopted?</p> <p>7 A. I don't recall.</p> <p>8 Q. Was it an in person meeting or an e-mail</p> <p>9 communication or phone call?</p> <p>10 A. I think probably in person discussions.</p> <p>11 Q. Were you talking about the ramifications of rule</p> <p>12 5.11 or development of the rules?</p> <p>13 MR. SWEETEN: The question is asking you to</p> <p>14 reveal the specific subject matter. Don't do that.</p> <p>15 That impacts the attorney/client privilege as well as</p> <p>16 the legislative privilege. So you can answer it. I've</p> <p>17 let you as to who was involved, when, how long, but</p> <p>18 don't reveal the subject.</p> <p>19 Q. (By MS. WESTFALL) Are you following the advice</p> <p>20 of council?</p> <p>21 A. Yes.</p> <p>22 Q. Was Mr. Dewhurst, himself, involved in this</p> <p>23 communication?</p> <p>24 A. Not that I recall.</p> <p>25 Q. It was solely staff?</p>
<p>218</p> <p>1 identification, bills or resolutions.</p> <p>2 Q. (By MS. WESTFALL) And what is that criteria for</p> <p>3 voter identification resolutions set forth in 5.11?</p> <p>4 A. That a bill of resolution reported favorably from</p> <p>5 the Committee of the whole may be set as a special order</p> <p>6 with 24 hours notice.</p> <p>7 Q. Are you aware of any communications involving the</p> <p>8 Lieutenant Governor pertaining to rule 5.11 in the 2009</p> <p>9 rules?</p> <p>10 MR. SWEETEN: You can answer if you're aware</p> <p>11 of any communication.</p> <p>12 A. Yes.</p> <p>13 Q. (By MS. WESTFALL) When did that communication</p> <p>14 occur?</p> <p>15 A. January. I don't know. It would have been 2008</p> <p>16 or 2009.</p> <p>17 Q. Are you aware of more than one communication on</p> <p>18 this topic?</p> <p>19 A. Yes.</p> <p>20 Q. When was the first one that you're aware of, when</p> <p>21 did that take place?</p> <p>22 A. Again, it would have been right before -- right</p> <p>23 at the beginning of session. So 2008 or January 2009.</p> <p>24 Q. Who was a party to that communication?</p> <p>25 A. I remember it was discussed generally, I mean,</p>	<p>220</p> <p>1 A. That's my memory, yes.</p> <p>2 Q. And there was more than one communication; is</p> <p>3 that correct?</p> <p>4 A. Probably.</p> <p>5 Q. Do you believe there was a conversation in the</p> <p>6 end of 2008 regarding the two-thirds rule and voter ID?</p> <p>7 A. A conversation before session started in '09</p> <p>8 about the two-thirds rule.</p> <p>9 Q. Correct.</p> <p>10 A. Do I believe it?</p> <p>11 Q. Do you recall?</p> <p>12 A. Oh, I don't recall it. Again, no, it's possible</p> <p>13 that it was discussed, but I really can't recall whether</p> <p>14 it was reacting to this or before this.</p> <p>15 Q. When did you first hear about photo ID and the</p> <p>16 two-thirds rule?</p> <p>17 A. I think within generally, it would have been late</p> <p>18 2008, early 2009 is my guess. I don't remember a</p> <p>19 specific date of when I heard about it.</p> <p>20 Q. Did you have any conversations with anyone</p> <p>21 outside of the Lieutenant Governor's office about the</p> <p>22 two-thirds rule and voter ID before the rule was</p> <p>23 adopted?</p> <p>24 A. I don't think so. I don't recall.</p> <p>25 Q. Did you have any discussions with Janice McCoy on</p>



<p>221</p> <p>1 this topic?</p> <p>2 A. I don't recall.</p> <p>3 Q. Did you have any discussions with anyone in</p> <p>4 Governor Perry's office about this topic?</p> <p>5 A. Probably not. But I don't recall for sure.</p> <p>6 Q. Based upon your experience working for the</p> <p>7 Lieutenant Governor, how many times has the two-thirds</p> <p>8 rule been suspended as a matter of public record?</p> <p>9 MR. SWEETEN: You can answer.</p> <p>10 A. There was a -- I remember there being debate on</p> <p>11 the Senate floor about how often this happens and it</p> <p>12 seemed like under Lieutenant Governor Dewhurst it</p> <p>13 perhaps had happened once or twice. But then</p> <p>14 historically it happened more than that.</p> <p>15 Q. (By MS. WESTFALL) And what were the occasions</p> <p>16 you're aware of, the two-thirds rule has been suspended?</p> <p>17 A. I'm not aware of specific examples. I just</p> <p>18 remember discussion of it has happened before.</p> <p>19 Q. Janice McCoy testified in deposition she was</p> <p>20 unaware of any other bills except voter ID being</p> <p>21 exempted from the two-thirds rule. Do you believe that</p> <p>22 testimony is accurate?</p> <p>23 A. I guess, I believe she's not aware. I'm not sure</p> <p>24 that that's right or not. It seems like there may have</p> <p>25 been -- in my memory, there may have been one special</p>	<p>223</p> <p>1 matters that are subject to the legislative privilege.</p> <p>2 She ask you to reveal thoughts or mental impressions</p> <p>3 about legislation, legislative process so I'm going to</p> <p>4 instruct you don't reveal those to the extent you can</p> <p>5 refer to matters that are public record you're free to</p> <p>6 do so.</p> <p>7 A. I'm not aware of public statements by Senators</p> <p>8 about whether they were willing to vote for or against</p> <p>9 the bill. But, again, in the legislative process the</p> <p>10 bill goes through different iterations and for any</p> <p>11 number of reasons a member can change their vote so --</p> <p>12 and they do change their votes. I don't know the answer</p> <p>13 about whether it could have passed.</p> <p>14 Q. (By MS. WESTFALL) Did Senate Bill 362 ultimately</p> <p>15 pass the Senate?</p> <p>16 A. Yes.</p> <p>17 Q. Did it pass by two-thirds?</p> <p>18 A. I don't recall. I believe it was majority.</p> <p>19 Q. Are you aware of any other communications related</p> <p>20 to consideration of modifying any other Senate rules in</p> <p>21 addition to rule 5.11, with regard to voter ID bills?</p> <p>22 MR. SWEETEN: She's asking you to reveal</p> <p>23 communications that may have occurred between</p> <p>24 legislatures and legislative staff, State agencies,</p> <p>25 Texas Leg. Council, as well as to reveal your thoughts</p>
<p>222</p> <p>1 session, but again, I can't remember the specific</p> <p>2 examples. Just that there were examples.</p> <p>3 Q. Did it pertain to the directing?</p> <p>4 A. Maybe.</p> <p>5 Q. Would Senate Bill 362 have passed the Senate if</p> <p>6 the Senate had not adopted rule 5.11 in the 2009 Senate</p> <p>7 rules?</p> <p>8 MR. SWEETEN: Objection. When you're</p> <p>9 answering the question, don't reveal thoughts or mental</p> <p>10 impressions or opinions about legislation or furtherance</p> <p>11 of the legislative process.</p> <p>12 A. I don't know. I don't know whether it would have</p> <p>13 passed or not.</p> <p>14 Q. (By MS. WESTFALL) You have no idea?</p> <p>15 A. I have no idea.</p> <p>16 Q. Was it -- was the bill passed on party lines,</p> <p>17 Senate Bill 14?</p> <p>18 A. I believe that it was.</p> <p>19 Q. So sitting here today you have no understanding</p> <p>20 of whether the bill would have or would not have --</p> <p>21 whether -- I'm sorry. Strike that.</p> <p>22 Sitting here today you no idea of whether Senate</p> <p>23 Bill 362 would have passed if it had been subject to a</p> <p>24 two-thirds rule in 2009?</p> <p>25 MR. SWEETEN: Yeah. She's asking for</p>	<p>224</p> <p>1 and mental impressions, opinions about legislation. To</p> <p>2 the extent you're asserting the legislative privilege</p> <p>3 that question that asks for matters of the legislative</p> <p>4 privilege so my instruction would be not to answer the</p> <p>5 question.</p> <p>6 Q. (By MS. WESTFALL) Are you going to follow your</p> <p>7 counsel's advice?</p> <p>8 A. Yes.</p> <p>9 Q. Was Senate Bill 362 considered by any Senate</p> <p>10 committees?</p> <p>11 MR. SWEETEN: You can answer as a matter of</p> <p>12 public record.</p> <p>13 A. I believe it was considered by the Committee of</p> <p>14 the whole.</p> <p>15 Q. (By MS. WESTFALL) And ordinarily it would have</p> <p>16 been sent to State affairs; is that right?</p> <p>17 A. I don't know that. But given that other election</p> <p>18 bills were generally referred there, then probably.</p> <p>19 Q. Janice McCoy testified in her deposition it was</p> <p>20 unusual for a bill to go straight to the Committee of</p> <p>21 the whole, do you agree with that assessment?</p> <p>22 A. Most bills do not go to Committee of the whole.</p> <p>23 Q. What was the purpose of the assignment of Senate</p> <p>24 Bill 362 to the Committee of the whole?</p> <p>25 MR. SWEETEN: In that question she's asking</p>



<p style="text-align: center;">225</p> <p>1 you to reveal thoughts, mental impressions, opinions 2 about legislation or furtherance of the legislative 3 process as well as communications. Therefore, that 4 would be a matter that is subject to the legislative 5 privilege?</p> <p>6 Q. (By MS. WESTFALL) Are you asserting privilege 7 and not answering the question?</p> <p>8 A. Yes.</p> <p>9 Q. What was Lieutenant Governor's role, generally, 10 during Senate Bill 362, as Committee of the whole?</p> <p>11 MR. SWEETEN: In that -- to the extent that 12 she's asking you to reveal thoughts, mental impressions, 13 opinions about legislation or furtherance of the 14 legislative process including communications you had 15 with Lieutenant Governor Dewhurst, legislatures, 16 legislative staff, state agencies, Texas Legislative 17 Council, so don't reveal those. To the extent you can 18 refer to matters of the public record you're free to do 19 so.</p> <p>20 A. I believe the Senate rules provide that he can 21 participate and vote like any Senator and my memory is 22 that he was on the Senate floor and I don't recall if he 23 had questions for witnesses or not. I believe he did 24 cast a vote on the bill.</p> <p>25 Q. (By MS. WESTFALL) On 362 before the Committee of</p>	<p style="text-align: center;">227</p> <p>1 Q. (By MS. WESTFALL) Was there any response from 2 Lieutenant Governor to these concerns?</p> <p>3 MR. SWEETEN: Same objection, same 4 instruction.</p> <p>5 A. I don't recall if he had questions of witnesses 6 or not.</p> <p>7 Q. (By MS. WESTFALL) Are you asserting privilege 8 over your response in part?</p> <p>9 MR. SWEETEN: Well, I mean, I thought you 10 were asking matters of the public record.</p> <p>11 MS. WESTFALL: I am. I thought you made an 12 objection.</p> <p>13 MR. SWEETEN: Well, I mean, I instructed and 14 I'll continue to do so. You can refer to matters on the 15 public record to the extent that it's asking for 16 something else other than legislative privilege that 17 would my instruction.</p> <p>18 A. I don't remember any public input. I don't 19 remember specific public questions or input from 20 Lieutenant Governor or anyone else on the floor about 21 the testimony from the witnesses. I know there was. I 22 just don't remember particular specifics.</p> <p>23 Q. (By MS. WESTFALL) Based on the bill history of 24 Senate Bill 362, were there any changes in the 25 iterations of the bill, either from when it was filed,</p>
<p style="text-align: center;">226</p> <p>1 the whole; is that right?</p> <p>2 A. I believe that's right.</p> <p>3 Q. Did he vote in favor of the bill?</p> <p>4 A. I believe he did.</p> <p>5 Q. During the floor debate on Senate Bill 362, do 6 you recall any concerns about the impact of the bill on 7 minority voters on the public record?</p> <p>8 MR. SWEETEN: If she's asking you what was 9 expressed on the public record you're free to answer. 10 Don't reveal matters of legislative privilege. Go 11 ahead.</p> <p>12 A. I do recall discussion during the public debate 13 of 362 about the impact on voters, yes.</p> <p>14 Q. (By MS. WESTFALL) On minority voters?</p> <p>15 A. All voters, including minority voters.</p> <p>16 Q. And who expressed those concerns?</p> <p>17 A. My memory is that most of the witnesses had 18 something to say about it.</p> <p>19 Q. What was the response to those concerns?</p> <p>20 MR. SWEETEN: Again, you can reveal matters 21 on the public record, but don't reveal matters that are 22 subject to the legislative privilege.</p> <p>23 A. I don't recall particular responses. I'm 24 assuming you mean from the Senators themselves. I don't 25 recall.</p>	<p style="text-align: center;">228</p> <p>1 went through the drafting process that were made in 2 response to concerns about the impact of the bill on 3 minority matters?</p> <p>4 MR. SWEETEN: You're asking him to reveal 5 thoughts, mental impressions, or opinions about 6 legislation or furtherance of the legislative process as 7 well as protected communications. So I'm asserting -- 8 I'm objecting based upon legislative privilege.</p> <p>9 Q. (By MS. WESTFALL) Do you recall that there was a 10 letter from Senators expressing concern that ethnic and 11 racial minority members of the Senate were unified in 12 their opposition to Senate bill 362?</p> <p>13 MR. SWEETEN: Is this a matter of public 14 record.</p> <p>15 MS. WESTFALL: Yes.</p> <p>16 A. Yes.</p> <p>17 BY MS. WESTFALL:</p> <p>18 Q. You recall that letter?</p> <p>19 A. I believe so, yes.</p> <p>20 Q. Do you recall any conversations in response to 21 that letter?</p> <p>22 MR. SWEETEN: Don't reveal matters of 23 legislative privilege including discussions you have had 24 with staffers, legislators, Lieutenant Governor, et 25 cetera. You are free to refer to the matters of the</p>



<p style="text-align: center;">229</p> <p>1 public record.</p> <p>2 A. Right. I don't recall the specific public</p> <p>3 response to that letter from Lieutenant Governor</p> <p>4 Dewhurst or anyone else.</p> <p>5 Q. So you're talking about public record, public</p> <p>6 response. Are you aware of any conversations about that</p> <p>7 letter?</p> <p>8 MR. SWEETEN: You can answer if you're aware</p> <p>9 of conversations.</p> <p>10 A. Right. I cannot recall.</p> <p>11 Q. (By MS. WESTFALL) Was it true that some</p> <p>12 legislatures and members of the public stayed up all</p> <p>13 night during consideration of Senate Bill 362?</p> <p>14 A. I did. We did.</p> <p>15 Q. And many people did?</p> <p>16 A. My recollection is the Senate chamber was --</p> <p>17 certainly the Senators did. Yes, there was some public</p> <p>18 testimony.</p> <p>19 Q. Why do you think there was such strong opposition</p> <p>20 to Senate bill 362?</p> <p>21 MR. SWEETEN: Don't answer. That would</p> <p>22 require you to reveal thoughts mental impressions</p> <p>23 opinions about legislation. It's a matter that is</p> <p>24 subject to legislative privilege.</p> <p>25 A. Right.</p>	<p style="text-align: center;">231</p> <p>1 from a procedural standpoint.</p> <p>2 Q. Did you any conversations with House members or</p> <p>3 their staff concerning Senate Bill 362 when it was</p> <p>4 referred to the House?</p> <p>5 MR. SWEETEN: You can answer whether you had</p> <p>6 any conversations.</p> <p>7 A. I may have had conversations.</p> <p>8 Q. (By MS. WESTFALL) With whom?</p> <p>9 A. House staff.</p> <p>10 Q. And who specifically?</p> <p>11 A. I can't remember the names of staff.</p> <p>12 Q. Did you talk to Speaker Strauss's staff?</p> <p>13 A. Probably.</p> <p>14 Q. Did you talk to Meredith Fowler?</p> <p>15 A. Probably.</p> <p>16 Q. Was she the main person handling photo ID issues</p> <p>17 for the Speaker in 2009?</p> <p>18 A. I don't know if she was the primary person. She</p> <p>19 was a person that I talked to.</p> <p>20 Q. What was her role?</p> <p>21 A. I believe she's a lawyer in the Speaker's office.</p> <p>22 Q. Is she still employed with the Speaker or is she</p> <p>23 no longer employed with the Speaker?</p> <p>24 MR. SWEETEN: You can answer.</p> <p>25 A. I think she's still employed.</p>
<p style="text-align: center;">230</p> <p>1 Q. (By MS. WESTFALL) Are you asserting privilege?</p> <p>2 A. Yes.</p> <p>3 Q. Are you aware of any amendments to Senate Bill</p> <p>4 362 that were -- which had the purpose of addressing the</p> <p>5 concerns of minority legislatures or minority voters?</p> <p>6 MR. SWEETEN: As phrased, the question</p> <p>7 requires you to reveal thoughts, mental impressions,</p> <p>8 opinions about legislation or furtherance of the</p> <p>9 legislative process subject to legislative privilege. I</p> <p>10 instruct you not to answer.</p> <p>11 Q. (By MS. WESTFALL) Are you following the advice</p> <p>12 of council?</p> <p>13 A. Yes.</p> <p>14 Q. Did Senate Bill 326 pass the Senate?</p> <p>15 MR. SWEETEN: You can answer.</p> <p>16 A. Yes.</p> <p>17 Q. (By MS. WESTFALL) Did it get referred to the</p> <p>18 House?</p> <p>19 A. I believe it did.</p> <p>20 Q. Did you play any role in Senate Bill 362 once it</p> <p>21 went to the House?</p> <p>22 MR. SWEETEN: Objection, vague.</p> <p>23 Q. (By MS. WESTFALL) You may answer.</p> <p>24 A. I think in a similar way that I was available for</p> <p>25 questions. I was available as a resource. Certainly</p>	<p style="text-align: center;">232</p> <p>1 Q. (By MS. WESTFALL) How many conversations did you</p> <p>2 have with Ms. Fowler?</p> <p>3 A. Probably a few, more than a handful, but not a</p> <p>4 lot.</p> <p>5 Q. Did you have conversations with any other staff</p> <p>6 person in the House regarding Senate Bill 362?</p> <p>7 A. Perhaps the staff in the bill sponsor's office.</p> <p>8 Q. Was that -- so what happened to Senate Bill 362</p> <p>9 in the House?</p> <p>10 A. I cannot recall. It did not pass.</p> <p>11 Q. Do you know why?</p> <p>12 MR. SWEETEN: Objection. She's asking</p> <p>13 you -- to the extent she's asking you for communications</p> <p>14 you've had with individuals or thoughts, mental</p> <p>15 impressions, or opinions about legislation.</p> <p>16 A. I don't know why.</p> <p>17 MR. SWEETEN: Therefore privileged.</p> <p>18 Q. (By MS. WESTFALL) Was a photo ID bill introduced</p> <p>19 in the Senate in 2011?</p> <p>20 MR. SWEETEN: You can answer.</p> <p>21 A. Yes.</p> <p>22 Q. (By MS. WESTFALL) Was it Senate Bill 214?</p> <p>23 A. Yes.</p> <p>24 Q. Did Senator Fraser introduce that?</p> <p>25 A. Yes.</p>



<p style="text-align: center;">233</p> <p>1 Q. Senator Fraser testified in deposition in this 2 case he started working on the bill on May 31, 2009. Do 3 you believe that sounds accurate? 4 A. I believe that sounds like Senator Fraser. 5 Q. In other words, it's accurate? 6 A. Sure.</p> <p>7 Q. Did the Lieutenant Governor or anyone in his 8 office have any conversations prior to May 31, 2009 9 about Senate Bill 14? 10 A. So did we discuss that Bill 14 before the end of 11 2009 session? 12 Q. Correct. 13 A. I don't recall. I mean, as a practical matter it 14 wouldn't have even had a number. 15 Q. I'll rephrase it to say, did you conceptually 16 discuss filing a photo ID bill in the 2011 session prior 17 to May 31, 2009? 18 A. I can't recall. 19 Q. Did the Lieutenant Governor promise anyone he 20 would file -- or push -- not file, push photo ID in 21 legislation 2011? 22 MR. SWEETEN: The question potentially calls 23 for matters that are -- calls for information that would 24 be protected by the legislative privilege including 25 conversations you had with the Lieutenant Governor,</p>	<p style="text-align: center;">235</p> <p>1 A. I don't recall any promise. 2 BY MS. WESTFALL: 3 Q. Are you asserting any privileges in responding to 4 that question? 5 MR. SWEETEN: I haven't instructed him as to 6 privilege. 7 A. I just don't recall. 8 Q. (By MS. WESTFALL) Was Senate Bill 14 9 considered -- strike that. 10 Was Senate Bill 14 designated by the Governor to 11 be emergency legislation? 12 A. Yes. Well, the issue of voter identification was 13 an issue that was deemed to be an emergency issue. 14 Q. How did voter ID come to receive that emergency 15 designation? 16 MR. SWEETEN: Objection. You're asking for 17 thoughts, mental impressions, or opinions about 18 legislation. You can testify about matters in the 19 public record. 20 A. I don't recall the Governor's statement about why 21 he added the emergency items that he did to the 22 emergency call. 23 Q. (By MS. WESTFALL) Are you asserting legislative 24 privilege over gubernatorial acts as the Governor is not 25 able to introduce legislation? Is that your position?</p>
<p style="text-align: center;">234</p> <p>1 legislative staff, legislators, or it also could require 2 you to reveal thoughts or mental impressions about the 3 bill. So to the extent that she's asking for matters of 4 legislative question do not answer the question. 5 MS. WESTFALL: Is it your position that 6 promises to advance legislation falls within legislative 7 privilege? 8 MR. SWEETEN: You're asking about a 9 conversation that Lieutenant -- 10 MS. WESTFALL: Promises to advance 11 legislation. Are you saying that falls within the 12 privilege? Is that your position? 13 MR. SWEETEN: Well, I mean I think what you 14 are asking for is the substance of communications that 15 Lieutenant Governor Dewhurst may or may not have had 16 with someone. If you want to ask specifically about 17 whether he had a conversation with someone about the 18 bill that's a general subject matter, I think promises 19 that relates to, you know, is probably a little beyond 20 what you're allowed to ask for. 21 Q. So you're asserting privilege over promises, 22 Mr. Sweeten? I'm not sure you've take then position. 23 MR. SWEETEN: You know what. I'm going to 24 let him answer as to promises. You can answer that 25 question.</p>	<p style="text-align: center;">236</p> <p>1 MR. SWEETEN: Well, what I'm saying is, if 2 you're asking him questions about communications he's 3 had with the State agency including the Governors 4 office, legislatures, legislative staff, and you're 5 asking him to reveal that information, then that would 6 be subject to legislative privilege. I also said he can 7 testify about matters in the public record so to the 8 extent it involves privilege don't answer it. If you 9 can answer without providing information that would be 10 privileged then you can do so. 11 A. The short answer is, I don't know why he added 12 the items he did to the list of emergency items. 13 Q. (By MS. WESTFALL) Are you aware of any 14 communications on that topic? 15 A. No. 16 Q. Are you aware of whether the Lieutenant Governor 17 requested this designation of the Governor's office? 18 A. Not aware. 19 Q. Are you aware of any conversations about that 20 topic between the Lieutenant Governor's office and the 21 Governor's office related to the emergency designation 22 of voter ID? 23 A. I'm not aware. 24 Q. Who would know the answer to that question? 25 MR. SWEETEN: Objection calls for</p>



<p style="text-align: center;">237</p> <p>1 speculation.</p> <p>2 Q. (By MS. WESTFALL) Would Lieutenant Governor</p> <p>3 Dewhurst?</p> <p>4 A. If they existed he might.</p> <p>5 Q. What were the consequences of this emergency</p> <p>6 designation of voter ID?</p> <p>7 A. Generally speaking, an emergency item -- an item</p> <p>8 designated as an emergency by the Governor is exempted</p> <p>9 from some of the normal procedural time lines and so you</p> <p>10 can introduce it sooner and consider it sooner and pass</p> <p>11 it sooner to address the emergency.</p> <p>12 Q. What was the emergency?</p> <p>13 MR. SWEETEN: The question would ask you to</p> <p>14 reveal matters that are subject to legislative privilege</p> <p>15 or conversations that would be subject to legislative</p> <p>16 privilege, so don't answer to the extent you would have</p> <p>17 to do so. You can refer to matters of the public</p> <p>18 record.</p> <p>19 A. I'm not aware of the grounds for the items that</p> <p>20 he listed, the emergency items.</p> <p>21 Q. (By MS. WESTFALL) Are you aware of any</p> <p>22 conversations about the emergency nature of the need for</p> <p>23 voter ID in the State of Texas in 2011?</p> <p>24 MR. SWEETEN: Objection, asked and answered.</p> <p>25 Q. (By MS. WESTFALL) You may answer.</p>	<p style="text-align: center;">239</p> <p>1 A. At committee hearing or in the newspapers, in the</p> <p>2 State, nationally or when you say public record, what is</p> <p>3 it that you're referring to?</p> <p>4 Q. The public and legislative record related to SB</p> <p>5 14.</p> <p>6 A. So the debate between Senators and the Senate? I</p> <p>7 don't recall if there was specific discussion or debate</p> <p>8 on the Senate floor about whether it was an emergency or</p> <p>9 not or why it might have been an emergency?</p> <p>10 Q. And I was just -- I would ask you again, were you</p> <p>11 as the person who was involved in the issue for</p> <p>12 Lieutenant Governor, did you familiarity with the public</p> <p>13 record and legislative history of Senate Bill 14, as a</p> <p>14 general matter?</p> <p>15 A. Sure.</p> <p>16 Q. Could you mark this as US 78?</p> <p>17 (Exhibit No. 78 was marked.)</p> <p>18 Q. (By MS. WESTFALL) You've been handed what's been</p> <p>19 marked US 78. Have you seen that document before?</p> <p>20 A. Yes.</p> <p>21 Q. What is it?</p> <p>22 A. It is a letter from Lieutenant Governor Dewhurst,</p> <p>23 in this case to Senator Birdwell, but I think it went to</p> <p>24 the whole Senate saying that he intends to recognize</p> <p>25 Senator Duncan to bring the Senate into a Committee of</p>
<p style="text-align: center;">238</p> <p>1 A. I'm not aware.</p> <p>2 Q. Did you have any communications with Senator</p> <p>3 Fraser's staff about the emergency designation?</p> <p>4 MR. SWEETEN: Objection, asked and answered.</p> <p>5 You can answer.</p> <p>6 A. I'm sure I had conversations just in terms of how</p> <p>7 it affected the timeline for introducing the bill and</p> <p>8 passing it.</p> <p>9 MR. SWEETEN: But don't reveal substance of</p> <p>10 the communication. You can reveal whether a</p> <p>11 communication occurred.</p> <p>12 BY MS. WESTFALL:</p> <p>13 Q. Would those conversations have been with</p> <p>14 Ms. McCoy?</p> <p>15 A. Yes.</p> <p>16 Q. And do you believe anyone else was involved in</p> <p>17 those communications besides Ms. McCoy?</p> <p>18 A. I don't recall.</p> <p>19 Q. Is there anything in the public record related to</p> <p>20 the need or urgency or emergency nature of voter ID in</p> <p>21 2011, that you're aware of?</p> <p>22 A. What in the public record was evidence of an</p> <p>23 emergency? I don't recall now.</p> <p>24 Q. Are you familiar with the public record related</p> <p>25 to SB 14?</p>	<p style="text-align: center;">240</p> <p>1 the whole to consider Senate Bill 14. And so appoints</p> <p>2 Senator Duncan to chair that Committee.</p> <p>3 Q. Why did Senator Duncan make a motion to resolving</p> <p>4 the Senate to a Committee of the whole?</p> <p>5 MR. SWEETEN: Objection. Calls for matters</p> <p>6 of legislative privilege. Don't answer the question.</p> <p>7 Q. (By MS. WESTFALL) Are you following the advice</p> <p>8 of council?</p> <p>9 A. Yes.</p> <p>10 Q. Could Lieutenant Governor, himself, not make this</p> <p>11 motion to resolve the Senate to a Committee of the</p> <p>12 whole? It's a procedural question.</p> <p>13 A. Procedurally under the senate rules I don't</p> <p>14 believe the Lieutenant Governor can make that motion.</p> <p>15 Q. And that is why Senator Duncan or any Senator</p> <p>16 could have made this motion; is that correct?</p> <p>17 A. I think that's right.</p> <p>18 Q. And as chair of Committee of the whole, what</p> <p>19 powers did Senator Duncan have under the rules?</p> <p>20 MR. SWEETEN: She's asking you a matter of</p> <p>21 public record and procedure. So you can answer it.</p> <p>22 A. Right. My memory is that under the rules of</p> <p>23 precedent and Senate procedure that you would have</p> <p>24 similar role as when he was chairing his own State</p> <p>25 Affairs Committee. He would preside procedurally</p>



<p>241</p> <p>1 recognizing members and so forth to debate.</p> <p>2 Q. (By MS. WESTFALL) Who was the chair of the State</p> <p>3 Affairs Committee in 2011?</p> <p>4 A. Senator Duncan.</p> <p>5 Q. And this also -- this letter from Mr. Dewhurst</p> <p>6 also refers to a draft resolution concerning procedures,</p> <p>7 do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. And do you know whether the draft -- strike that.</p> <p>10 What did the draft resolution regarding</p> <p>11 procedures indicate, if you know?</p> <p>12 MR. SWEETEN: You can testify if that's a</p> <p>13 matter of the public record.</p> <p>14 A. I believe it just outlined who would preside, the</p> <p>15 general timing of the day, how amendments would be</p> <p>16 handled, how witnesses would be handled, just procedural</p> <p>17 nuts and bolts.</p> <p>18 Q. (By MS. WESTFALL) Were those procedures adopted</p> <p>19 and incorporated into the Senate journal?</p> <p>20 A. I don't recall.</p> <p>21 Q. Have those procedures been produced to us,</p> <p>22 Mr. Sweeten, as part of this litigation?</p> <p>23 MR. SWEETEN: I'm not sure even what you're</p> <p>24 specifically talking about. If they're procedures that</p> <p>25 are a matter of the public record -- can you tell me a</p>	<p>243</p> <p>1 duty to provide something. I mean, there's several</p> <p>2 layers of analysis we must do before we're going to be</p> <p>3 able to answer that question, but if you're asking if --</p> <p>4 where we can start is, I can ask my folks back at the</p> <p>5 office if such a thing exists. Whether we have it in</p> <p>6 our production and we'll take it from there. I'm glad</p> <p>7 to do that.</p> <p>8 MS. WESTFALL: Thank you.</p> <p>9 BY MS. WESTFALL:</p> <p>10 Q. Do you know whether the procedures proposed in</p> <p>11 this letter were adopted by the Senate?</p> <p>12 A. I don't recall.</p> <p>13 Q. Do you know anything about procedures or could</p> <p>14 you describe them?</p> <p>15 A. My memory, again, is that there's a president of</p> <p>16 Senate going into the Committee of the whole. My guess</p> <p>17 is that they were just parallel to what had been done</p> <p>18 before, but I don't recall.</p> <p>19 Q. Thank you for your testimony.</p> <p>20 Could you mark this as US 79?</p> <p>21 (Exhibit No. 79.)</p> <p>22 Q. (By MS. WESTFALL) You've been handed what's been</p> <p>23 marked as US 79. Do you recognize this document?</p> <p>24 A. It is a press release from Lieutenant Governor's</p> <p>25 Dewhurst office regarding Governor Perry's emergency</p>
<p>242</p> <p>1 little more about what you're asking for.</p> <p>2 MS. WESTFALL: The procedures set forth in</p> <p>3 the letter of January 20th, 2011, from David Dewhurst to</p> <p>4 Senator Birdwell referred to in the exhibit we were just</p> <p>5 discussing.</p> <p>6 MR. SWEETEN: Are we talking about 13 rule</p> <p>7 13--</p> <p>8 MS. WESTFALL: The procedures for the</p> <p>9 Committee of the whole. Do we have those? Have they</p> <p>10 produced to us in this litigation, Mr. Sweeten?</p> <p>11 MR. SWEETEN: I mean, is this something that</p> <p>12 is part of the record?</p> <p>13 MS. WESTFALL: That's what I'm examining the</p> <p>14 witness on and he's uncertain. And --</p> <p>15 MR. SWEETEN: Okay. Well, as you're asking</p> <p>16 me this --</p> <p>17 MS. WESTFALL: He's surprised that's there's</p> <p>18 a privilege you can assert over procedures related to</p> <p>19 the process of the Committee of the whole.</p> <p>20 MR. SWEETEN: Nor am I trying to take that</p> <p>21 position. I mean, one way or the other I'm not even --</p> <p>22 you know, you're asking me, did we produce something --</p> <p>23 MS. WESTFALL: Yes.</p> <p>24 MR. SWEETEN: I mean, that first presupposes</p> <p>25 that we were provided something or that someone had a</p>	<p>244</p> <p>1 call.</p> <p>2 Q. Have you seen it before today?</p> <p>3 A. I probably read it when it came out.</p> <p>4 Q. And do you see that it's dated January 20, 2010?</p> <p>5 A. Yes.</p> <p>6 Q. Do you think that's an error and it should be</p> <p>7 2011?</p> <p>8 A. Yeah, probably.</p> <p>9 Q. Do you see in the last paragraph it reads, Texans</p> <p>10 have fought and died for the principal of one person,</p> <p>11 one vote?</p> <p>12 A. Yes.</p> <p>13 Q. Can you explain what is meant by the need to</p> <p>14 uphold the principal of one person, one vote?</p> <p>15 MR. SWEETEN: You can answer the question to</p> <p>16 the extent it doesn't ask you to reveal communications</p> <p>17 you had with Lieutenant Governor Dewhurst, legislatures,</p> <p>18 legislative staff, or that it doesn't require you to</p> <p>19 reveal thoughts, mental impressions, opinions about the</p> <p>20 legislative session. You can answer to the extent you</p> <p>21 are not providing information that is within that</p> <p>22 privilege.</p> <p>23 A. I think it just means what it says. One person</p> <p>24 one vote, as a tenant of voting in the United States and</p> <p>25 I don't know what else asking.</p>



<p>245</p> <p>1 Q. (By MS. WESTFALL) Was there any threat to the 2 principal of one person, one vote that voter ID was 3 intended to remedy?</p> <p>4 MR. SWEETEN: You're asking him to reveal 5 thoughts, mental impressions, opinions about furtherance 6 of the legislation process and/or conversations that 7 we've discussed previously. So to that extent I'm going 8 to the object based on legislative privilege.</p> <p>9 Q. (By MS. WESTFALL) You following your counsel's 10 advice?</p> <p>11 A. Yes.</p> <p>12 Q. Do you see it also states in that paragraph that 13 there's a need to uphold the integrity of elections?</p> <p>14 A. Yes.</p> <p>15 Q. What was the basis for that statement?</p> <p>16 MR. SWEETEN: Same objection. The question 17 asks you to reveal thoughts, mental impressions, 18 opinions, about legislation or furtherance of the 19 legislative process or communications. So don't answer 20 to the extent that you would have to do so in answering 21 that question. You can answer it based on the public 22 record matters that are not subject to legislative 23 privilege, you can do so.</p> <p>24 A. Right. I mean, it means what it says on its 25 face. I mean, during the debate of the bill on the</p>	<p>247</p> <p>1 intended to be remedied by Senate Bill 14?</p> <p>2 A. Again, from the public record, I recall evidence 3 and discussion of the types of fraud that were being 4 committed in Texas and other states, I don't have those 5 specific numbers on my fingertips.</p> <p>6 Q. And was notice to Senators of the convening of 7 the Committee of the whole upheld within four days 8 notice from the time Senators were notified to when the 9 Committee was convened, do you recall that?</p> <p>10 A. I don't recall the number of days.</p> <p>11 Q. Bear with me one minute. Could you mark this. (Exhibit No. 80 was marked.)</p> <p>12 Q. (By MS. WESTFALL) You've been handed what's been 13 marked US 80. Do you recognize this document?</p> <p>14 A. It appears to be a letter from Senator Van 15 DePutte to Senator Duncan.</p> <p>16 Q. Have you seen this before?</p> <p>17 A. I believe, yes, when it came out I saw it.</p> <p>18 Q. Do you see that it issues a complaint about short 19 notice on convening of the Committee of the whole 20 executed by the Lieutenant Governor, on Page 1 of this 21 document?</p> <p>22 A. The second paragraph, yes.</p> <p>23 Q. Were you aware at the time of the relatively 24 short notice that the convening of the Committee of the</p>
<p>246</p> <p>1 Senate floor there was a lot of discussion about 2 ensuring the integrity of the elections.</p> <p>3 Q. (By MS. WESTFALL) But what was the need to 4 ensure? Was there a threat to the integrity of 5 elections that this bill was intended to address?</p> <p>6 MR. SWEETEN: Same objection. You're asking 7 him about the intent of the bill and what it was 8 intended to address that impacts matters of legislative. 9 Therefore, I'm instructing him not the answer to the 10 extent it would reveal matters of legislative privilege.</p> <p>11 Q. (By MS. WESTFALL) Are you following the advice 12 of council?</p> <p>13 A. Yes.</p> <p>14 MR. SWEETEN: You can reveal matters of the 15 public record.</p> <p>16 Q. (By MS. WESTFALL) Do you have any testimony 17 related to the public record on any threats to the 18 integrity of the elections that necessitated the need 19 for voter ID?</p> <p>20 A. My memory is just that, you know, the debate 21 among Senators was that there were threats. There was 22 election fraud that existed and this was a tool to 23 combat that.</p> <p>24 Q. Do you have any specific information about fraud 25 that was referenced in the public record that was</p>	<p>248</p> <p>1 whole?</p> <p>2 MR. SWEETEN: Objection, asked and answered. 3 He's already said.</p> <p>4 Q. (By MS. WESTFALL) You may answer.</p> <p>5 A. Again, I don't recall specific discussions about 6 this.</p> <p>7 Q. Are you aware that the notice was given to 8 Senators by slipping a note under the door after hours 9 on Thursday night before the Committee was convened?</p> <p>10 A. I don't know that it was to use the letter's 11 language literally slipped under most office doors.</p> <p>12 Q. Was the notice provided after hours on Thursday 13 of the convening of the Committee of the whole the next 14 week?</p> <p>15 A. I don't know what time it was delivered to each 16 Senator.</p> <p>17 Q. Was it delivered on Thursday before the convening 18 on Monday?</p> <p>19 MR. SWEETEN: Objection, asked and answered.</p> <p>20 A. Yeah. Again, probably, but I'm not sure of the 21 exact time.</p> <p>22 Q. (By MS. WESTFALL) Are you aware of any 23 conversations about perceived exclusion of members of 24 the Senate representing minority voters from the debate 25 on Senate Bill 14?</p>



<p style="text-align: center;">249</p> <p>1 MR. SWEETEN: You can answer the question. 2 Don't reveal matters subject to legislative privilege 3 including communications. You can answer to the extent 4 you're not doing so.</p> <p>5 A. I think there was some, again, in the public 6 debate on the bill I think some Senators made some more 7 statements.</p> <p>8 Q. (By MS. WESTFALL) And who would know exactly 9 when the Lieutenant Governor gave notice to all members 10 of the convening of the Committee of the whole?</p> <p>11 A. I don't know who would have hand delivered the 12 letter.</p> <p>13 Q. The Lieutenant Governor, himself, would know, 14 correct?</p> <p>15 A. He probably did not hand deliver the letter 16 personally.</p> <p>17 Q. He probably did not hand deliver it, but he 18 directed the letter to be sent to the Senators, correct?</p> <p>19 A. Yes, presumably.</p> <p>20 Q. Could you mark this. 21 (Exhibit No. 81 was marked.)</p> <p>22 Q. (By MS. WESTFALL) Can you show the witness. 23 MR. SWEETEN: Guess you better get one over 24 to me.</p> <p>25 MS. WESTFALL: I won't answer that question.</p>	<p style="text-align: center;">251</p> <p>1 MS. WESTFALL: Mr. Sweeten, I'm going to ask 2 him a series of questions about the text of the bill. I 3 am not intending to invade the privilege that you have 4 been asserting to that.</p> <p>5 MR. SWEETEN: Then I don't object at this 6 time.</p> <p>7 MS. WESTFALL: Very good. Very good.</p> <p>8 A. There's a difference of the forms of 9 identification that are acceptable.</p> <p>10 BY MS. WESTFALL:</p> <p>11 Q. Could you describe those?</p> <p>12 A. Sure. Senate bill 362 has a slightly longer list 13 of photo IDs that are acceptable and it allowed 14 non-photo ID at the polling place and Senate Bill 14 15 requires photo ID. And Senate 14 implements a longer 16 explanation and procedure for people who are exempted 17 from the photo ID requirement. Those seem to be the 18 major differences.</p> <p>19 Q. And many previous iterations of the bill before 20 Senate Bill 14 was filed. It allowed use of a driver's 21 license that had not expired more than 2 years before, 22 correct? And Senate Bill 14 reduced that time to 23 60 days; is that correct?</p> <p>24 A. I would have to look at the final version of the 25 draft. Senate Bill 14 in front of me it just says a not</p>
<p style="text-align: center;">250</p> <p>1 MR. SWEETEN: Objection.</p> <p>2 Q. (By MS. WESTFALL) You've been handed what's been 3 marked as US 81. Do you recognize this document.</p> <p>4 A. It is some version of Senate Bill 14.</p> <p>5 Q. If you look at the notation at the bottom of the 6 exhibit, does that indicate that this is the version of 7 the bill as filed?</p> <p>8 A. It doesn't indicate that. I would need to see -- 9 the file version will have a stamp from the Clerk's 10 office. I don't know if this is the final version or 11 what.</p> <p>12 Q. Can you look at the last page of Exhibit 81 and 13 you see there's -- this is certainly not the engrossed 14 version of the bill, correct?</p> <p>15 A. Correct.</p> <p>16 Q. Are you familiar with the provisions of Senate 17 Bill 14?</p> <p>18 A. Yes.</p> <p>19 Q. Could you describe the differences between Senate 20 Bill 362, about which you testified extensively and 21 Senate Bill 14?</p> <p>22 MR. SWEETEN: If you're asking him about the 23 differences on the text he can do so, but if you're 24 asking him about his thoughts, opinions about the 25 legislation, then, I would object to that.</p>	<p style="text-align: center;">252</p> <p>1 expired driver license. And I can't remember the final 2 number from the final draft.</p> <p>3 Q. Could you mark this as US Exhibit 5, please? 4 (US Exhibit No. 5 was marked.)</p> <p>5 Q. (By MS. WESTFALL) You've been handed what's been 6 previously marked as US Exhibit 5. Do you recognize 7 this document?</p> <p>8 A. Yes, this is the SB 14.</p> <p>9 Q. Yes. And is this the version that was engrossed?</p> <p>10 A. Yes, this appears to be that version.</p> <p>11 Q. Turning your attention to Page 9, where it list 12 the form of ID. Do you see that?</p> <p>13 A. Uh-huh.</p> <p>14 Q. And do you see that with regard to driver's 15 licenses that they expire no earlier than 60 days before 16 presentation; is that correct?</p> <p>17 A. Yes.</p> <p>18 Q. Would you characterize this on the face of the 19 Senate Bill 326 and Senate Bill 14 as having major 20 changes between the two bills?</p> <p>21 A. There are changes between the two bills, yes.</p> <p>22 Q. And was it a significant change, in your view, to 23 have removed non-photo ID as a form of ID? Just on the 24 face of the bills?</p> <p>25 MR. SWEETEN: You're asking for his opinions</p>



<p>253</p> <p>1 about legislation. You know, I don't have a problem if 2 you ask him a period of the text, but I think if you're 3 asking him these major changes and certainly qualitative 4 issues then I think that you're getting into legislative 5 privilege.</p> <p>6 MS. WESTFALL: As he's sitting today he 7 can't testify based on his expertise of drafting, based 8 on his expertise of election law? How does that relate 9 to a legislative --</p> <p>10 MR. SWEETEN: Okay. If that's your question 11 and you're not asking him to discuss matters for 12 example, information he heard from communication or his 13 mental impressions that he had, you know, as these bills 14 were proceeding, then he can answer as he's sitting here 15 today, if that's your question.</p> <p>16 BY MS. WESTFALL:</p> <p>17 Q. Sitting here today, is it a significant change 18 between Senate Bill 362 and Senate Bill 14 in terms of 19 the forms ID allowable?</p> <p>20 A. Yes.</p> <p>21 Q. And is that in part because Senate Bill 14 no 22 longer allows the use of non-photo ID; is that correct?</p> <p>23 A. Yeah. I think that's the significant difference.</p> <p>24 Q. Are there any other significant differences other 25 than that?</p>	<p>255</p> <p>1 Lieutenant Governor's staff. 2 A. Yes, I was involved with Senate Bill 14. 3 4 Q. (By MS. WESTFALL) Were you involved in the 5 drafting analysis of Senate Bill 14?</p> <p>6 MR. SWEETEN: Objection, compound. Also, 7 don't reveal your thoughts and mental impressions or 8 communications regarding this bill. 9 A. Yes. 10 Q. (By MS. WESTFALL) Were you involved in the 11 drafting of Senate Bill 14?</p> <p>12 A. Yes. 13 Q. Were you involved in analysis of Senate Bill 14?</p> <p>14 A. Yes. 15 Q. When did you start drafting Senate Bill 14? 16 A. I don't recall when I first started drafting it. 17 To the extent -- I don't remember when I first 18 contributed to the draft. 19 Q. Do you remember when anyone first started 20 drafting Senate Bill 14? 21 A. No. I don't remember the particular date. 22 Q. Was it after SB 362 failed? 23 A. Probably. 24 Q. Shortly after? 25 A. My memory is that was not shortly after, but just</p>
<p>254</p> <p>1 A. I think the SB 14's addition of expansion of the 2 ways in which provisional ballots can be counted for 3 those people who don't have ID is also significant. 4 Q. And how is that based on the face of the bill? 5 A. I think under 362 the provisional ballot system 6 stayed essentially the same. And then SB 14 the 7 provisional ballot system is expanded to clarify which 8 persons -- to include a class of people who can still 9 cast a ballot even without photo ID. And I'm looking 10 for that now. 11 Also, SB 14 creates a new election identification 12 certificate. 13 Q. Are there any other major differences that you're 14 aware of between the two bills? 15 A. Glancing at the math I think those are the big 16 ones. 17 Q. Thank you for your testimony. 18 Were you involved in developing Senate Bill 14? 19 MR. SWEETEN: Objection, to the form. 20 Objection, vague. Also don't reveal information that's 21 subject to the legislative privileges including your 22 thoughts or opinions or your communications with 23 individuals. Those are subject to legislative 24 privileges. Also, don't reveal attorney/client 25 privileges between you and other members of the</p>	<p>256</p> <p>1 sometime after when the next session was rolling around 2 is when you would introduce legislation. 3 Q. Was the drafting of Senate Bill 14 started in 4 earnest after the November 2010 elections? 5 MR. SWEETEN: Objection, asked and answered. 6 A. I don't know when exactly. 7 Q. (By MS. WESTFALL) When did -- when did your role 8 in drafting Senate Bill 14 start? 9 A. My role had been for several years at that point. 10 So I don't -- I don't know that there was a time at 11 which we sat and drafted this thing and, you know, had 12 it filed. So again, it was a process, not a day when we 13 sat down and rolled up our sleeve. 14 Q. Do you recall when your involvement in that 15 process, you just described, started with regard to this 16 particular bill? 17 A. I don't remember particulars or start date. 18 Q. Who would know when that process started in your 19 office? 20 MR. SWEETEN: Objection, calls for 21 speculation. 22 Q. (By MS. WESTFALL) You may answer. 23 A. I think you would have to ask the sponsor of the 24 bill when they started it. 25 Q. And when you started working on the drafting of</p>



<p style="text-align: center;">257</p> <p>1 Senate Bill 14, whenever that occurred, were there any 2 source that you consulted with?</p> <p>3 MR. SWEETEN: That calls for matters that 4 are subject to the legislative privileges. Don't reveal 5 thoughts, mental impressions, opinions about legislation 6 or furtherance of the legislation process that includes 7 your thought processes. That is subject to legislative 8 privilege, objection. Instruct not to answer.</p> <p>9 Q. (By MS. WESTFALL) Are you following the advice 10 of your council?</p> <p>11 A. Yes.</p> <p>12 Q. Did you look at any models from any interest 13 group?</p> <p>14 MR. SWEETEN: Same objection.</p> <p>15 Q. (By MS. WESTFALL) Are you following the advice 16 of your council?</p> <p>17 A. Yes.</p> <p>18 Q. So it's your -- okay.</p> <p>19 Did you look at any other States photo ID's laws 20 in drafting Senate Bill 14?</p> <p>21 MR. SWEETEN: Once again, you're asking for 22 his mental impressions, his thought processes regarding 23 the legislation. That is subject to the legislative 24 privilege.</p> <p>25 MS. WESTFALL: Are you instructing him not</p>	<p style="text-align: center;">259</p> <p>1 introduced, have you listed everybody who was involved 2 in drafting?</p> <p>3 A. I think so.</p> <p>4 Q. Did you have any communications about SB 14 with 5 any current or former legislatures or staff who had 6 offered or introduced past photo ID bills?</p> <p>7 A. Did I communicate with members or staff from '09 8 or '07 about the '11 bill.</p> <p>9 Q. Or '05?</p> <p>10 A. I don't think so.</p> <p>11 MR. SWEETEN: Elizabeth, can we get to a 12 point of a break pretty quickly here.</p> <p>13 MR. WESTFALL: Sure. Why don't we break 14 now.</p> <p>15 MR. SWEETEN: Sounds good.</p> <p>16 (Brief recess.)</p> <p>17 BY MS. WESTFALL:</p> <p>18 Q. Let's go back on the record. I want to turn your 19 attention back to Exhibit 78, the letter from 20 Mr. Dewhurst to Senator Birdwell. Could you look at 21 maybe a copy of your counsel's? Do you see at the 22 bottom it says DD colon E G?</p> <p>23 A. Yes.</p> <p>24 Q. Is the DD, David Dewhurst?</p> <p>25 A. I don't know.</p>
<p style="text-align: center;">258</p> <p>1 to answer?</p> <p>2 MR. SWEETEN: I am. Unless you can 3 answer -- hold on one second. Unless you can answer 4 without revealing matters that are subject to the 5 legislative privilege.</p> <p>6 A. There may have been discussion and testimony 7 about other states. Otherwise, I would assert the 8 privilege.</p> <p>9 BY MS. WESTFALL:</p> <p>10 Q. Who else besides you was involved in drafting 11 Senate Bill 14?</p> <p>12 A. I believe Janice McCoy and Legislative Council 13 attorneys. Probably Jennifer Jackson is all I know for 14 sure.</p> <p>15 Q. Jennifer Jackson was with the State Affairs 16 Committee?</p> <p>17 A. No. She was -- Jennifer Jackson was the 18 legislative council attorney.</p> <p>19 Q. Thank you.</p> <p>20 Anybody else you can think of involved in the 21 drafting?</p> <p>22 A. Again, there may have been amendments offered on 23 the floor that were drafted by other people, I don't 24 know.</p> <p>25 Q. But just as to the body of the bill that was</p>	<p style="text-align: center;">260</p> <p>1 Q. And who is the EG, do you know whose initials 2 those are, who would have been copied on this letter?</p> <p>3 A. I don't know that those -- I don't know what 4 those letters mean.</p> <p>5 Q. Do you know anyone who's first name --</p> <p>6 A. There's also a David Duran at the Governor's 7 office. That's probably not his initials, but the point 8 being I don't know.</p> <p>9 Q. Who is Elaine Gonzales?</p> <p>10 A. She the -- I don't know her title. Office 11 manager assistant to Governor Dewhurst, et cetera.</p> <p>12 Q. Thank you.</p> <p>13 MR. SWEETEN: By the way, Elizabeth I want 14 to go ahead on the record and tell you that we have 15 produced what you asked earlier about the draft 16 resolution outlining the procedures of the Committee as 17 a whole. On Page 60 of the Senate journal dated 1/24/11 18 and that has been produced I'm told.</p> <p>19 MS. WESTFALL: Fantastic. Thank you.</p> <p>20 MR. SWEETEN: That seemed very helpful to 21 you.</p> <p>22 MR. ROSENBERG: Have we decided is that 23 going to happen tomorrow or not, do we know? I'm just 24 trying to tell my other people.</p> <p>25 (Discussion off the record.)</p>



<p style="text-align: center;">261</p> <p>1 BY MS. WESTFALL:</p> <p>2 Q. So we will go back on the record.</p> <p>3 Are you aware of any communications with any of</p> <p>4 firms or any legislatures from any other States about S</p> <p>5 B 14?</p> <p>6 A. Yes.</p> <p>7 MR. SWEETEN: You can answer if you're aware</p> <p>8 of.</p> <p>9 A. Yes.</p> <p>10 Q. (By Ms. Westfall) And who are those individuals?</p> <p>11 A. About SB 14?</p> <p>12 Q. Yes.</p> <p>13 A. There would have been communications with</p> <p>14 individual and elections official and I forget his name.</p> <p>15 I believe he testified in the hearing. That's all I</p> <p>16 know for sure.</p> <p>17 Q. Did you have any communications with any official</p> <p>18 in Georgia?</p> <p>19 A. That's what I'm trying to remember. I cannot</p> <p>20 recall for sure.</p> <p>21 Q. How many conversations did you have with</p> <p>22 officials in Indiana? Or how many communications are</p> <p>23 you aware of with officials in Indiana?</p> <p>24 A. There would have been a handful. And again, I</p> <p>25 only had one or two conversations, communications. I</p>	<p style="text-align: center;">263</p> <p>1 anyone in your office had communications with any group</p> <p>2 representing minority voters?</p> <p>3 MR. SWEETEN: Hold on a minute. You can</p> <p>4 answer as to the subject matter as phrased. Whether you</p> <p>5 had communications that's fine.</p> <p>6 A. I'm trying to keep straight SB 146789 there are</p> <p>7 groups that made their opinions on voter identification</p> <p>8 in general for and against. I would say I probably had</p> <p>9 indirect communications, meaning some sort of</p> <p>10 constituent letter or e-mail or conversation in a</p> <p>11 meeting. I'm sure that happened with group from both</p> <p>12 sides, including minority workers case.</p> <p>13 Q. Do you recall any with regard to Senate Bill 14</p> <p>14 in particular?</p> <p>15 A. I believe in the public testimony there were</p> <p>16 testimony from MALDEF and NAACP and maybe LULAC.</p> <p>17 Q. Were there any meetings involving anyone from</p> <p>18 Lieutenant Governor's office with any of those group</p> <p>19 related to SB 14?</p> <p>20 A. I would say we didn't have meetings with interest</p> <p>21 group.</p> <p>22 Q. Pardon?</p> <p>23 A. We didn't have meetings with interest group as</p> <p>24 you described them. We met with anyone who wanted to</p> <p>25 have a meet?</p>
<p style="text-align: center;">262</p> <p>1 shouldn't say conversation.</p> <p>2 Q. Was anyone else involved in those communications?</p> <p>3 A. I believe Janus McCoy lined up that witness or</p> <p>4 the hearing.</p> <p>5 Q. Were the communications regarding the hearing?</p> <p>6 A. I don't know everything they talked about, but</p> <p>7 anything they I'm aware of it was about the hear.</p> <p>8 Q. You were a party to these conversations; is that</p> <p>9 right?</p> <p>10 A. Yes.</p> <p>11 Q. And can you tell me the general nature of the</p> <p>12 communications?</p> <p>13 A. Before the hearing it was, can you come down and</p> <p>14 share your experience in Indiana. And then the day of</p> <p>15 the hearing it was more sort of pleasantries, welcome to</p> <p>16 Texas, if you need something, explaining procedurally</p> <p>17 how the Senate works and so forth.</p> <p>18 Q. Did you have any other communications with those</p> <p>19 officials?</p> <p>20 A. Not that I recall.</p> <p>21 Q. Did you have any communications about SB 14 with</p> <p>22 any interest group?</p> <p>23 A. Other than there were people that testified in</p> <p>24 the original hearing. I can't remember specific group.</p> <p>25 Q. Do you remember whether you had communications or</p>	<p style="text-align: center;">264</p> <p>1 Q. Did you or the Lieutenant Governor exchange</p> <p>2 drafts with Senate Bill 14 with anybody?</p> <p>3 MR. SWEETEN: Objection, compound.</p> <p>4 A. Drafts of Senate Bill 14 I would have only</p> <p>5 exchanged with Lieutenant Governor's staff and the</p> <p>6 people I mentioned so far, the staff I mentioned so far.</p> <p>7 Q. (By MS. WESTFALL) That is Ms. McCoy?</p> <p>8 A. Correct.</p> <p>9 Q. Ms. Jackson?</p> <p>10 A. Correct.</p> <p>11 Q. Anybody else?</p> <p>12 A. Not that I recall.</p> <p>13 Q. In drafting Senate Bill 14 did the Lieutenant</p> <p>14 Governor or anyone in his office review any reports or</p> <p>15 studies?</p> <p>16 MR. SWEETEN: I'm going to object based upon</p> <p>17 legislator privilege. You're asking for mental</p> <p>18 impressions, thought processes related to pending</p> <p>19 legislation and that is a matter that is subject to</p> <p>20 legislative privilege as well as the deliberative</p> <p>21 process privilege.</p> <p>22 Q. (By Ms. Westfall) Do you have any testimony in</p> <p>23 response to my question?</p> <p>24 A. I'll assert the privilege.</p> <p>25 Q. Did you consider including any forms of</p>



<p>265</p> <p>1 additional ID in Senate Bill 14?</p> <p>2 MR. SWEETEN: Same objection. Do not reveal</p> <p>3 any thoughts, communications or privileged</p> <p>4 communications as we went over in legislative privilege.</p> <p>5 A. In the Senate Committee there was discussion of</p> <p>6 previous drafts there was discussion of potential</p> <p>7 amendments there was a lot of discussion.</p> <p>8 Q. (By MS. WESTFALL) And other than that, you're</p> <p>9 asserting privilege in response to that answer?</p> <p>10 A. Correct.</p> <p>11 Q. Are you aware of any analysis that was conducted</p> <p>12 regarding how many registered voters possessed the</p> <p>13 required forms of ID under S B 14?</p> <p>14 MR. SWEETEN: Don't reveal thoughts, mental</p> <p>15 impressions, or opinions about legislative for further</p> <p>16 answer of the legislative process and don't reveal</p> <p>17 communications. You can refer to matters in the public</p> <p>18 matter with respect to this question.</p> <p>19 A. Again, there was discussion in the public hearing</p> <p>20 about the impact it would have on vote something</p> <p>21 general, particular communities specifically regarding</p> <p>22 internal communications. I'll assert the privilege.</p> <p>23 Q. (By MS. WESTFALL) Thank you. Are you aware of</p> <p>24 any analysis to determine if minority voters would be</p> <p>25 disproportionately less likely to possess the additional</p>	<p>267</p> <p>1 be subject to the privilege.</p> <p>2 MS. WESTFALL: Those are deliberations. But</p> <p>3 what was the decision since Lieutenant Governor Dewhurst</p> <p>4 did not ultimately vote on Senate Bill 14; is that</p> <p>5 correct? So what is the decision that you are asserting</p> <p>6 deliberative process over?</p> <p>7 MR. SWEETEN: As to decisions with respect</p> <p>8 to any procedural aspect of the bill, the decisions that</p> <p>9 they reviewed, that the processes were formulated -- so</p> <p>10 it would be as to their actions with respect to the bill</p> <p>11 --</p> <p>12 MS. WESTFALL: So that's --</p> <p>13 MR. SWEETEN: In addition to the legislative</p> <p>14 privilege.</p> <p>15 MS. WESTFALL: I understand you're asserting</p> <p>16 legislative privilege. I'm going to ask you to withdraw</p> <p>17 deliberative process privilege because I'm not -- unless</p> <p>18 there's something else that you need to add on this</p> <p>19 topic -- I'm not understanding what the decision is that</p> <p>20 relates to these communications since the Lieutenant</p> <p>21 Governor did not vote on this legislation he was</p> <p>22 actively involved.</p> <p>23 MR. SWEETEN: He was also involved in the</p> <p>24 Committee-of-the-Whole hearing. It reflects the give</p> <p>25 and take of the consultative process, which is something</p>
<p>266</p> <p>1 forms or ID allowed under SB 14?</p> <p>2 MR. SWEETEN: Same objection. The question</p> <p>3 asks you to reveal thoughts, mental impression, opinions</p> <p>4 about legislations, rules, the potential communications</p> <p>5 with State Agencies, State Legislative Staff,</p> <p>6 Legislators, Legislative Council, therefore it'd be</p> <p>7 legislatively privileged. It also invades deliberative</p> <p>8 process of privilege, therefore I'm instructing you not</p> <p>9 to answer.</p> <p>10 A. Again, to the extent -- my answer would involve</p> <p>11 internal communications. I would assert the privilege.</p> <p>12 But again in public -- in the testimony publicly, there</p> <p>13 was a discussion I recall about how this would impact --</p> <p>14 I mean, what percentages of different communities might</p> <p>15 have or not have the identification. And I believe that</p> <p>16 was from the Secretary of State's office and from</p> <p>17 Senators.</p> <p>18 MS. WESTFALL: What is the final -- what is</p> <p>19 the decision that you're asserting with regard to</p> <p>20 deliberative process privilege with regard to these</p> <p>21 communications?</p> <p>22 MR. SWEETEN: Well, first of all, I am</p> <p>23 honestly relying upon the legislative privilege.</p> <p>24 However with respect to their deliberations with respect</p> <p>25 to Senate Bill 14, I'm referring to that. Those would</p>	<p>268</p> <p>1 that the court has recognized as being subject to the</p> <p>2 deliberative process privilege.</p> <p>3 MS. WESTFALL: It's certainly deliberative,</p> <p>4 but the court certainly had concerns about the</p> <p>5 privileged logs produced previously and their failure to</p> <p>6 identify the decision at issue. So I would ask you to</p> <p>7 identify on the record what the decision is or to</p> <p>8 withdraw your privilege instruction based on</p> <p>9 deliberative process.</p> <p>10 MR. SWEETEN: I think I have been clear.</p> <p>11 We're talking about the Committee-of-the-Whole -- of the</p> <p>12 whole process with respect to decisions about that</p> <p>13 process, with respect to his role in that process, with</p> <p>14 respect his role -- any role that he had with the Senate</p> <p>15 Bill 14 legislation. I think that that all -- those all</p> <p>16 would be matters that are covered in addition to the</p> <p>17 fact that I'm asserting legislative privilege.</p> <p>18 MS. WESTFALL: I understand the assertion of</p> <p>19 legislative privilege. We have plenty of testimony from</p> <p>20 this witness that -- and it's clear from the face of the</p> <p>21 Senate rules that the Lieutenant Governor is not able to</p> <p>22 introduce legislation. What I'm examining this witness</p> <p>23 on right now is about his participation in drafting</p> <p>24 Senate Bill 14 so I do not believe that deliberative</p> <p>25 process privilege is an appropriate privilege to be</p>



<p style="text-align: center;">269</p> <p>1 interposing with regard to these questions. I ask you 2 withdraw that privilege. If you want to assert 3 legislative privilege, go ahead and do so, but not 4 deliberative process.</p> <p>5 MR. SWEETEN: I've made my objections.</p> <p>6 Q. (BY MS. WESTFALL) Ms. McCoy testified in 7 deposition in this case that there were no studies at 8 all about the analysis of who has and ID the for 9 purposes of Senate Bill 14, either public or private 10 studies.</p> <p>11 A. Studies of -- I'm sorry, Texas?</p> <p>12 MR. SWEETEN: Let her ask her question.</p> <p>13 Q. Ms. McCoy testified in deposition in this case 14 that there are no studies at all about any analysis of 15 who has and ID for purposes of Senate Bill 14, you know, 16 either public or private studies. Do you agree with her 17 testimony?</p> <p>18 MR. SWEETEN: In answering the question 19 don't reveal your thoughts, mental processes, opinions 20 about legislation or in furtherance of the legislative 21 process that would be legislatively privileged. Don't 22 reveal the communications that we previously outlined in 23 answering the question. So to the extent you can answer 24 it without revealing those, you can go ahead and do so. 25 Otherwise objection privileged.</p>	<p style="text-align: center;">271</p> <p>1 Q. Do you know what documents you need to have to 2 get a U.S. Passport? 3 A. I don't know the full list. I know birth 4 certificate, driver's license, those sorts of documents. 5 I don't know the full list.</p> <p>6 Q. Do you know how long it takes to get a U.S. 7 passport? 8 A. I don't recall.</p> <p>9 Q. Do you recall any conversations about not 10 including the non-photo forms of ID in Senate Bill 14 as 11 was permitted under Senate Bill 362?</p> <p>12 MR. SWEETEN: You can reveal whether or not 13 a conversation occurred on general subject matter, but 14 don't reveal the substance of the specific conversation.</p> <p>15 A. Yeah. I don't recall specific conversations. 16 But I think we discussed the forms of ID.</p> <p>17 Q. (By MS. WESTFALL) What was the purpose of 18 excluding non-photo forms of ID as allowable in Senate 19 Bill 14?</p> <p>20 MR. SWEETEN: Don't reveal your thoughts, 21 mental impressions, or opinions about legislation or 22 furtherance of the legislative process, or 23 communications to legislative privilege.</p> <p>24 A. I'll assert privilege.</p> <p>25 Q. You'll assert privilege. Are there any changes</p>
<p style="text-align: center;">270</p> <p>1 A. The question is, are there studies about Texas 2 voters?</p> <p>3 Q. (By MS. WESTFALL) Correct.</p> <p>4 A. Okay. I think that's correct. I don't remember 5 for sure.</p> <p>6 Q. Do you know what a citizenship certificate is?</p> <p>7 A. My understanding was that it's -- it's just that, 8 it's a certificate issued for various states of presence 9 in that state.</p> <p>10 Q. Do you know how much it costs to obtain one?</p> <p>11 A. I don't recall.</p> <p>12 Q. Do you know how much it would cost if you had one 13 and you need to replace it?</p> <p>14 A. I don't recall.</p> <p>15 Q. Do you know how long it would take to get a 16 replacement citizenship certificate?</p> <p>17 A. I don't recall.</p> <p>18 Q. Do you know how much it cost to obtain a U.S. 19 passport?</p> <p>20 A. I don't know exactly.</p> <p>21 Q. Do you know approximately?</p> <p>22 A. I think it's about -- there's a different price 23 for expedited versus regular. I want to say it's 24 \$60-something for the regular and then \$100 for an 25 expedited-ish.</p>	<p style="text-align: center;">272</p> <p>1 that occurred in the state of election administration in 2 Texas or otherwise between 2009 and 2011 that made these 3 forms of identification unacceptable and not proving 4 one's identity under Senate Bill 14?</p> <p>5 MR. SWEETEN: The question asks you to 6 reveal mental impressions, opinions, and furtherance of 7 the legislation. Therefore -- and also potentially 8 conversations that are privileged -- and therefore I'm 9 asserting legislative privilege. I instruct you not to 10 answer.</p> <p>11 Q. (By MS. WESTFALL) Are you following the advice 12 of council?</p> <p>13 A. Yes.</p> <p>14 Q. Can you -- do you know anything about the 15 circumstances under which the license to carry a 16 concealed handgun was included as a form of photo ID in 17 Senate Bill 14?</p> <p>18 MR. SWEETEN: Same objection. Instruct you 19 not to answer except for as to matters on the public 20 record.</p> <p>21 Q. (By MS. WESTFALL) Are you following advice of 22 council?</p> <p>23 A. Yes.</p> <p>24 Q. Do you know why Senate Bill 14 or what the 25 purpose was in not including Student IDs in the bill?</p>



<p>273</p> <p>1 MR. SWEETEN: You can answer questions per 2 the court order about the general purpose of Senate Bill 3 14. However don't reveal thoughts, mental impressions 4 that would be subject to the legislative privilege or 5 the subjective intent of the legislator.</p> <p>6 A. I believe -- my memory is there may have been 7 some public debate about that issue during the Committee 8 hearing, but I don't remember the exact nature of it.</p> <p>9 Q. (By MS. WESTFALL) Are you aware of any 10 conversations about the removal of Student IDs an 11 allowable form of ID from Senate Bill 14 and its impact 12 on students at historically black colleges in Texas?</p> <p>13 MR. SWEETEN: Objection. You're asking him 14 to reveal thoughts, mental impressions, or opinions, 15 about legislation or conversations that he had with 16 legislators, legislative staff, state agencies, or Texas 17 Legislative Council. As such, the question that you're 18 asking imposed is subject to the legislative privilege. 19 If you want to ask a more general and have a general 20 topical subject matter description, you know, I'll let 21 him answer that as I have all day. But as to the way 22 you've asked that question you're asking for very 23 specific conversation.</p> <p>24 Q. (By MS. WESTFALL) Are you following the advice 25 of council?</p>	<p>1 workers to include provisions on acceptance and handling 2 of identification.</p> <p>3 Q. (By MS. WESTFALL) Does the bill essentially 4 leave it to the Secretary of State to call and get 5 regulations on this -- not regulations, but guidelines?</p> <p>6 A. I believe the amended section of law here are 7 standards adopted by the Secretary of State.</p> <p>8 Q. Do you think the key to success of this bill, 9 Senate Bill 14, is the administration of the polls and 10 for poll workers to understand how they determine a 11 voter's identity?</p> <p>12 MR. SWEETEN: Her question is asking you to 13 reveal thoughts, mental impressions, and opinions and 14 legislation, therefore it's matter subject to the 15 legislator privilege.</p> <p>16 Q. (By MS. WESTFALL) Are you following the advice 17 of council?</p> <p>18 A. Yes.</p> <p>19 Q. Can you describe the provisions in Senate Bill 20 14, based on the face of the bill, concerning the 21 Election Identification Certificate?</p> <p>22 A. The Election Identification Certificate on Page 23 13 requires, I believe it's DPS, Department of Public 24 Safety, to issue these cards to persons if they are a 25 registered voter in the State and eligible for</p>
<p>274</p> <p>1 A. Yes.</p> <p>2 Q. Are you aware of any conversations, public or 3 private, concerning voter ID bills and historically 4 black colleges in Texas?</p> <p>5 MR. SWEETEN: I think we are a little beyond 6 general subject matter, but I'll let him answer if he's 7 aware of such conversations.</p> <p>8 A. I'm not aware.</p> <p>9 Q. How did the exception for individuals with 10 disabilities come to be included in Senate Bill 14?</p> <p>11 MR. SWEETEN: That's a matter subject to 12 legislative privilege and I instruct you not to answer.</p> <p>13 Q. (By Ms. Westfall) Are you following the advice of 14 council?</p> <p>15 A. Yes.</p> <p>16 Q. Could you describe, on the basis of the face of 17 the statute, the provisions in the bill pertaining to 18 the administration of the ID requirements at the polls 19 and how poll workers would determine whether the ID was 20 sufficient?</p> <p>21 MR. SWEETEN: The question -- since the 22 question is confined to the texts of the bill, you can 23 answer.</p> <p>24 A. Section 6 of the bill, at the bottom of Page 3, 25 looks like it requires training standards for election</p>	<p>276</p> <p>1 registration. It provides they cannot collect a fee for 2 that certificate, or for a duplicate certificate, or any 3 replacement. It says it can only be used for election 4 purposes and not for as a personal identification 5 certificate. It provides election officers have to 6 accept that election ID as a valid form of 7 identification proof. It says the election ID should be 8 similar to but distinguishable from the Driver's 9 License. It requires provision of certain documents or 10 information to get the ID. It allows the department to 11 decide when those certificates or identification cards 12 expire, except that once you reach 70 years of age, it 13 doesn't expire.</p> <p>14 Q. Was this provision related to election 15 identification certificates in the bill as filed first?</p> <p>16 A. My memory is that it was not filed.</p> <p>17 MS. WESTFALL: Let the record reflect the 18 witness is turning to Exhibit 81 or looking for 19 Exhibit 81.</p> <p>20 MR. SWEETEN: Caution the witness to review 21 Exhibit 81, the prior version of the bill.</p> <p>22 MS. WESTFALL: It's actually the filed 23 version of the bill.</p> <p>24 THE WITNESS: Election Identification 25 Certificate was not in the filed version.</p>



<p>277</p> <p>1 Q. At what stage in the process, based on the public 2 record did it become included in SB 14?</p> <p>3 A. I don't have all of the different versions in 4 front of me and I can't remember if it was before it 5 passed the Senate or in conference Committee or in the 6 House maybe. Sometime after being filed.</p> <p>7 Q. Thank you. Were you involved in the drafting of 8 this particular provision yourself?</p> <p>9 A. Yes.</p> <p>10 Q. Was the Election Identification Certificate in 11 previous photo ID bills and prior legislative sessions?</p> <p>12 A. I don't think so.</p> <p>13 Q. How did you develop this language in SB 14?</p> <p>14 MR. SWEETEN: Objection. You're asking him 15 to reveal his thoughts, mental impressions, opinions 16 about legislation, legislative process and so subject to 17 legislative privilege.</p> <p>18 MS. WESTFALL: Instruct him not to answer?</p> <p>19 MR. SWEETEN: Instruct him not to answer.</p> <p>20 Q. (BY MS. WESTFALL) Are you following your 21 counsel's advice?</p> <p>22 A. Yes.</p> <p>23 Q. Are you aware of any conversations about the 24 Election Identification Certificate to which you or 25 anyone in the Lieutenant Governor's office was a party</p>	<p>279</p> <p>1 the difficulty or steps necessary to take to obtain an 2 election certificate?</p> <p>3 A. I'm sorry. Could you repeat that?</p> <p>4 Q. Certainly. Certainly. Are you aware of any 5 communications or conversations concerning difficulty in 6 obtaining an Election Identification Certificate that 7 occurred during that drafting and consideration of SB 8 14?</p> <p>9 MR. SWEETEN: I think this does more than 10 ask for a general subject matter topic, but you can go 11 ahead and answer the question as posed.</p> <p>12 A. I don't recall specific conversations about it 13 being difficult to obtain one of these certificates.</p> <p>14 Q. (By MS. WESTFALL) Are you aware of any testimony 15 or public statements about difficulty of obtaining an 16 Election Identification Certificate?</p> <p>17 A. I don't recall any.</p> <p>18 Q. Are you aware of any analysis of the cost or 19 steps that a voter would need to take to obtain an 20 Election Identification Certificate?</p> <p>21 A. Yeah --</p> <p>22 MR. SWEETEN: In answering that questions it 23 would require you to reveal thoughts, mental 24 impressions, opinions about legislation, or 25 communications that are subject to the legislative</p>
<p>278</p> <p>1 during the drafting process for Senate Bill 14?</p> <p>2 MR. SWEETEN: You can answer.</p> <p>3 A. Yes.</p> <p>4 Q. (By MS. WESTFALL) When was the first 5 conversation you're aware of?</p> <p>6 A. Again, it would have been sometime after the 7 filing of the bill. Perhaps even after -- again I can't 8 remember without seeing each stage of the draft, I 9 recall exactly when it would have been.</p> <p>10 Q. Who was a part of the communication?</p> <p>11 A. Again, it would have been myself and probably 12 Janus McCoy, perhaps Senator Fraser. That's all I can 13 recall for sure.</p> <p>14 Q. Was the Lieutenant Governor involved in any 15 conversations about the Election Identification 16 Certificate?</p> <p>17 A. I don't believe so.</p> <p>18 Q. How many conversations did you have with 19 Ms. McCoy?</p> <p>20 A. About Identification Certificate?</p> <p>21 Q. Yes?</p> <p>22 A. Probably a handful.</p> <p>23 Q. Did you have any e-mail communications with her?</p> <p>24 A. Perhaps, but I don't recall specifically.</p> <p>25 Q. Where you aware of any conversations concerning</p>	<p>280</p> <p>1 privilege. Therefore I instruct you not to answer the 2 question on the basis of legislative privilege.</p> <p>3 Q. (By MS. WESTFALL) Are you following council's 4 advice?</p> <p>5 A. Yes.</p> <p>6 Q. What documents are needed to obtain an Election 7 Identification Certificate under SB 14?</p> <p>8 A. Looks like Subsection F allows the department to 9 require applicants to furnish information required by 10 and it refers to another section. So I think it's the 11 same sorts of documents required to get a Driver's 12 License.</p> <p>13 Q. Do you know how much it costs to obtain those 14 underlying documents as you sit here today?</p> <p>15 A. I don't recall.</p> <p>16 Q. If an individual lacks those documents, is it 17 possible to get an Election Identification Certificate 18 without paying the cost for the underlying documents?</p> <p>19 MR. SWEETEN: You're asking based upon the 20 text as written?</p> <p>21 MS. WESTFALL: Yes.</p> <p>22 MR. SWEETEN: And his current knowledge?</p> <p>23 MS. WESTFALL: Yes.</p> <p>24 A. I would have to see a list under 521142 that's 25 referenced here.</p>



<p style="text-align: center;">281</p> <p>1 Q. (BY MS. WESTFALL) If the documents needed for 2 the underlying forms of identification are not 3 themselves free, there's a cost to voting for those who 4 lack the necessary documents, is there not?</p> <p>5 A. There's a cost to obtain the Certificate if this 6 is the only way, yes. There are also provisional ballot 7 provisions that allow you to vote without the proper --</p> <p>8 Q. Right. And under those provisions under the face 9 of the statute, if you vote a provisional ballot, your 10 ballot won't be counted unless you produce and supply an 11 appear before the County Election Official with a 12 necessary form of ID, correct?</p> <p>13 A. Let me check. Looks like Page 6 there, if you 14 are disabled, that's an exception. But generally I 15 think you're right.</p> <p>16 Q. Thank you. Do you know where a voter can obtain 17 an Election Identification Certificate?</p> <p>18 A. It says the department may issue so I assume the 19 same place as you would get personal identification 20 certificates for a Driver's License.</p> <p>21 Q. And that would be under the Department of Public 22 Safety?</p> <p>23 A. Correct.</p> <p>24 Q. That would be Driver's License offices; is that 25 right?</p>	<p style="text-align: center;">283</p> <p>1 leave to -- for the time it takes to obtain an 2 identification?</p> <p>3 A. I don't believe it does.</p> <p>4 Q. Do you know whether some individuals and voters 5 in Texas live at least 50 miles from the Driver's 6 License office?</p> <p>7 MR. SWEETEN: You can answer, if you know 8 while you're sitting here.</p> <p>9 A. Yeah, I mean, as I sit today I don't know that 10 for sure.</p> <p>11 Q. Do you know whether any group of minorities are 12 less likely than other groups to have the necessary 13 forms of ID under SB 14?</p> <p>14 MR. SWEETEN: Objection to the extent that 15 the question calls for you to reveal thoughts, or mental 16 impressions, opinions about legislations, discussions 17 you had with legislators, legislative staff, state 18 agencies, Texas Legislative Council. Those matters 19 would be subject to the legislative privilege so do not 20 reveal those. You can refer to matters in the public 21 record.</p> <p>22 A. So the question is: Are some minority groups 23 less likely to have photo identification than other 24 group? I don't know.</p> <p>25 Q. (By MS. WESTFALL) Are you aware of any</p>
<p style="text-align: center;">282</p> <p>1 A. Correct. It looks like it's silent as the 2 different types of places.</p> <p>3 Q. Do you know the hours of operation of those 4 offices, generally speaking?</p> <p>5 MR. SWEETEN: Objection compound.</p> <p>6 A. Of all driver's license offices in the State of 7 Texas?</p> <p>8 MR. SWEETEN: And when you're providing this 9 answer, just don't reveal mental impressions, thoughts 10 or communications that occurred in formulating the bill.</p> <p>11 THE WITNESS: Sure.</p> <p>12 MS. WESTFALL: This is information about 13 hours of operation. How is this possibly something that 14 over which you could assert privilege? This is like 15 probably on a website, Patrick.</p> <p>16 MR. SWEETEN: If it relates back to 17 information that he learned and would reveal his mental 18 impression, thoughts, or communications that incurred at 19 the time then that potentially is privileged. Again he 20 can answer as he is sitting here if he knows so I will 21 let him do that.</p> <p>22 Q. (By MS. WESTFALL) Do you know?</p> <p>23 A. I believe the hours vary depending on the 24 location of the office.</p> <p>25 Q. Does SB 14 require employers to provide paid</p>	<p style="text-align: center;">284</p> <p>1 conversations with the Department of Public Safety 2 during the drafting of SB 14 related to Election 3 Identification Certificates?</p> <p>4 MR. SWEETEN: You can reveal whether or not 5 you're aware of such conversations. Do not reveal the 6 substance of those conversations.</p> <p>7 A. I am not aware of conversations with the 8 Department of Public Safety.</p> <p>9 Q. (By MS. WESTFALL) During any time during the 10 consideration of SB 14; is that right?</p> <p>11 A. About Election Identification Certificates?</p> <p>12 Correct.</p> <p>13 Q. Yes. Thank you. And when did you last renew 14 your Driver's License?</p> <p>15 A. I don't know. A year or two ago.</p> <p>16 Q. Did you go in person?</p> <p>17 A. Yes.</p> <p>18 Q. What were the hours of operation of that office?</p> <p>19 A. My memory is they were standard 8:00 to 5:00, 20 9:00 to 5:00 hours, but I can't recall for sure.</p> <p>21 Q. How far that office from your home?</p> <p>22 A. It was -- well, about 8 miles.</p> <p>23 Q. Did you wait in a line to renew Driver's License?</p> <p>24 A. No.</p> <p>25 Q. Did you drive to get there?</p>



<p>285</p> <p>1 A. I walked from my office where I worked. 2 Q. Do you have a copy of your birth certificate? 3 A. Did I? 4 Q. Do you? 5 A. Yes. 6 Q. If you lost it, do you know how you would replace it? 7 A. I'm not 100% sure. I imagine I would contact the State of birth. 8 Q. We talked a little bit about this, but could you 9 provide an overview based on the statute of the 10 provisional ballot provisions? 11 MR. SWEETEN: You're asking him based upon 12 the text of the statute? 13 MS. WESTFALL: Right. 14 MR. SWEETEN: Of SB 14? 15 MS. WESTFALL: Yeah. 16 A. So if you show up to vote -- and this is on Page 17 4 of the final -- never mind. Wrong copy. Looking at the bill engrossed version as finally adopted, if a voter shows up and does not have the required identification he'd be accepted provisional voting at which point the election officer shall inform them of the right to cast a provisional ballot, provide them written information listing the requirements for ID</p>	<p>287</p> <p>1 A. Sure. Again, the general purpose of voter 2 identification and election reform bills would be to 3 ensure -- 4 Q. I'm directing your attention to Senate Bill 14. 5 I'm sorry to interrupt you but I just want to make sure 6 the question is understood. 7 A. Sure. As I stated earlier, to ensure the 8 integrity of the elections and instill confidence among 9 voters, certainly a purpose. This particular bill also 10 has the purpose of making sure that voters are informed. 11 And making sure that poll workers are trained. 12 Q. Anything else? 13 A. I'm sure there are others. But that seems to me 14 to be the main purposes. 15 Q. In terms of the basis and information and behind 16 why SB 14 furthers the integrity of elections; is there 17 anything other than the testimony you provided earlier 18 about that purpose with regard to an earlier iteration 19 of the bill that you would like to testify about today, 20 with regard to Senate bill 14? 21 A. I don't understand the question. Can you read 22 that back, please? 23 Q. All right. It's late in the day. Let me 24 withdraw that question. 25 You testified earlier about how a previous Photo</p>
<p>286</p> <p>1 procedures for presenting that ID, and a map showing 2 them where the identification must be presented. And 3 then it says those provisions do not apply to a voter 4 who is disabled and prevents their Voter Registration 5 Certificate. 6 Q. So with the exception of that exception, if you 7 vote provisionally and you do not, within 6 days, 8 provide a form of the ID, your provisional ballot is not 9 counted; is that right? 10 A. I believe that's correct. 11 Q. Can you describe each and every purpose of Senate 12 Bill 14? 13 MR. SWEETEN: You can answer the question, 14 provide the general purpose of the bill. 15 A. When you say purpose, you don't mean intent. You 16 mean, what does the bill do on its face? 17 Q. (By Ms. Montgomery) Yes. Well, purpose, you 18 know, per the court's order either public or private, 19 the purpose of the bill, any purpose? 20 A. So SB 14, again, looking at the statute -- 21 Q. But this is not limited to looking at the 22 statute. This is any purpose. And I'm sure Mr. Sweeten 23 will let you testify. Any purpose of the bill, public 24 or private, that you're aware of, pursuant to the order 25 of, I believe it was May 17th.</p>	<p>288</p> <p>1 ID Bill furthered the integrity of elections. Do you 2 remember that testimony? 3 A. Yes. 4 Q. Does all that testimony apply to why Senate Bill 5 14 furthers the integrity of elections? 6 A. I believe, yes. 7 Q. Is there anything else that you want to testify 8 about as to why Senate Bill 14 promotes integrity of 9 elections? 10 A. I don't think so. 11 Q. You also testified earlier that a previous 12 iteration Photo ID Bill instilled confidence in voters, 13 did you not? 14 A. I believe that's right. 15 Q. Could you explain how SB 14 instills confidence 16 in voters? 17 MR. SWEETEN: He's testified as to the 18 purpose of the bill. You're now asking him why is the 19 purpose of the bill correct. I think what you're asking 20 him to do is to reveal his thoughts, mental impressions, 21 or opinions with respect to the specific bill and I 22 think what you're asking him is subject to the 23 legislative privilege. I will allow him to testify as 24 he has about the purpose of Senate Bill 14. But I think 25 your questions beyond that are covered by the</p>



<p>289</p> <p>1 legislative privilege.</p> <p>2 A. I mean, I think -- again, there was testimony in</p> <p>3 Committee that the bill was designed to do the things</p> <p>4 that I just mentioned: Increase the security of the</p> <p>5 elections which has the impact of increasing the</p> <p>6 integrity of those elections.</p> <p>7 Q. (By MS. WESTFALL) Is there any facts, analysis,</p> <p>8 or information that you can testify about today that</p> <p>9 would indicate that Texas voters have confidence in</p> <p>10 their elections?</p> <p>11 MR. SWEETEN: Objection. You're asking him</p> <p>12 matters that would require him to reveal his mental</p> <p>13 impressions, his opinions about legislation, or</p> <p>14 furtherance of the legislative process and/or</p> <p>15 communications that we've outlined previously.</p> <p>16 Therefore this matter is legislatively privileged. And</p> <p>17 I object to the question on that basis. You can answer</p> <p>18 based upon matters of the public record.</p> <p>19 A. I don't recall what evidence is in the public</p> <p>20 record.</p> <p>21 Q. (By MS. WESTFALL) Thank you. And are you --</p> <p>22 A. I'm asserting privilege otherwise.</p> <p>23 Q. Thank you. Was any part of the purpose of SB 14</p> <p>24 to decrease the number of Hispanic voters?</p> <p>25 MR. SWEETEN: You can testify about the</p>	<p>291</p> <p>1 A. I'm not aware of any legislative incentive to</p> <p>2 decrease turnout among any group of voters.</p> <p>3 Q. Was any part of purpose of Senate Bill 14 to</p> <p>4 discriminate in any way against any group or groups of</p> <p>5 minority voters?</p> <p>6 A. I'm not aware of any legislative intent to</p> <p>7 discriminate against any group of voters.</p> <p>8 Q. Was any part of the purpose of Senate Bill 14 for</p> <p>9 partisan purposes?</p> <p>10 A. Partisan? You mean Republican versus democrat?</p> <p>11 Q. Correct.</p> <p>12 A. I'm not aware of any legislative intent based on</p> <p>13 partisanship.</p> <p>14 Q. And I believe you testified earlier that part of</p> <p>15 the purpose of Senate Bill 14 was to inform voters and</p> <p>16 train poll workers. Are both of those items with regard</p> <p>17 to the requirements of Senate Bill 14?</p> <p>18 A. Yes.</p> <p>19 Q. Did the purpose of photo ID in Texas evolve over</p> <p>20 time and change in any way from one session to the other</p> <p>21 in your view?</p> <p>22 MR. SWEETEN: I'm going to object. That</p> <p>23 calls for him to reveal matters that are subject to the</p> <p>24 legislative privilege including his thoughts, mental</p> <p>25 impressions, opinions about legislation or in</p>
<p>290</p> <p>1 purpose of the bill.</p> <p>2 A. Looking at the bill, the purpose is not to</p> <p>3 decrease voting by any particular group, except the</p> <p>4 group of ineligible voters.</p> <p>5 Q. (By Ms. Montgomery) But not based solely on the</p> <p>6 face of the bill -- I'm talking about the public and</p> <p>7 private purposes. I'm -- the court has allowed inquiry</p> <p>8 as to the public and private purposes of bills pursuant</p> <p>9 to its May 17th order. So not limiting your answer to</p> <p>10 the face of the bill, was any part of the purpose of</p> <p>11 Senate Bill 14 to decrease the number of Hispanic</p> <p>12 voters?</p> <p>13 MR. SWEETEN: You can answer. The court has</p> <p>14 said that it is -- that to the extent such as privilege</p> <p>15 the privilege does not protect testimony with respect to</p> <p>16 the general purpose or the purpose of a Legislature as a</p> <p>17 whole in enacting Senate Bill 14 as opposed to the</p> <p>18 subjective intent of the Legislature. Therefore you can</p> <p>19 answer based upon what the court has said you can</p> <p>20 testify to about the purpose.</p> <p>21 A. I'm not aware of any legislative purpose to</p> <p>22 decrease Hispanic voters turnout.</p> <p>23 Q. (By MS. WESTFALL) Was any part of the purpose of</p> <p>24 Senate Bill 14 to decrease the number of any other group</p> <p>25 of minority voters?</p>	<p>292</p> <p>1 furtherance of the legislative process.</p> <p>2 MS. WESTFALL: I'm asking his opinion about</p> <p>3 purposes which I'm allowed to examine on. So I'm not</p> <p>4 certain I'm asking his analytical ability of discussing</p> <p>5 purpose to purpose to purpose which he's testified about</p> <p>6 today. So I'm not certain why you would be directing</p> <p>7 him not to answer my question, Mr. Sweeten.</p> <p>8 MR. SWEETEN: Well, just to be clear. He's</p> <p>9 answered the question on the general purpose of the</p> <p>10 bill. He's answered the question on the general purpose</p> <p>11 of the other statutes that -- presented in front of him.</p> <p>12 So to the extent that you're asking him that, I will let</p> <p>13 him answer the question as to purpose. So you can go</p> <p>14 ahead and answer with that instruction.</p> <p>15 A. I would say generally the purpose has been the</p> <p>16 same. I mean, given that there are different sponsors,</p> <p>17 again, when you say purpose, I hear intent. And I don't</p> <p>18 know the intent of any given sponsor, or voter, on the</p> <p>19 supporter of this bill.</p> <p>20 Q. (BY MS. WESTFALL) Yes. I'm not asking about the</p> <p>21 intent.</p> <p>22 A. Right.</p> <p>23 MR. SWEETEN: Let him finish if you would.</p> <p>24 He's not finished with his answer. You can finish.</p> <p>25 A. So, yes. Generally speaking, the purpose as you</p>



<p style="text-align: center;">293</p> <p>1 mean it of each of these versions of the bill has 2 remained similar.</p> <p>3 Q. (BY MS. WESTFALL) And is it true that the 4 Lieutenant Governor has consistently indicated that one 5 of his purposes was to prevent non-citizens from voting?</p> <p>6 MR. SWEETEN: Don't reveal matters or 7 discussions that you've had with the Lieutenant Governor 8 that would invade the attorney/client privilege. Also 9 that would be subject to the legislative privilege. You 10 can testify as to matters of the public record and 11 public statements.</p> <p>12 A. Right. I'm not aware of any statements that 13 indicate that was his intent.</p> <p>14 Q. (By MS. WESTFALL) Okay. Well, remember you 15 testified about U.S. Exhibit 3 concerning a letter in 16 the Texas Weekly that related to the purpose of photo 17 ID --</p> <p>18 A. Right.</p> <p>19 Q. In preventing non-citizens from voting. Does 20 that refresh your recollection as to one of the 21 Lieutenant's Governor's intents and purposes in 22 promoting the issue of voter ID?</p> <p>23 MR. SWEETEN: He's not going to testify 24 about someone's subjective intent. He can testify about 25 whether or not something was -- a statement was made on</p>	<p style="text-align: center;">295</p> <p>1 given public statements.</p> <p>2 Q. Was any purpose of any Photo ID Bill to increase 3 voter turnout?</p> <p>4 MR. SWEETEN: Objection. Asked and 5 answered. He's provided the purpose of each of the 6 bills. You can answer as to the general purpose of the 7 legislation.</p> <p>8 A. Again, I would say that, yes, I'm more confident 9 in electorate that turns out in greater numbers.</p> <p>10 Q. (By MS. WESTFALL) So are you amending your 11 response to my question about each and every purpose of 12 Senate Bill 14 to include -- one of the purposes was to 13 increase voter turnout?</p> <p>14 MR. SWEETEN: Objection argumentative. You 15 can answer.</p> <p>16 A. My understanding was that you are asking me to 17 clarify and give more detail about an existing answer. 18 So my answer is the purpose of the bill -- one of the 19 purposes, the one that I would identify was to insure 20 the integrity of the elections and instill confidence in 21 the voting public. Whether that results in an increased 22 turnout might be ineffective and maybe it's the purpose 23 of it depending on how you characterize it.</p> <p>24 Q. (By MS. WESTFALL) Is it your testimony here 25 today that one of the purposes was to increase turnout?</p>
<p style="text-align: center;">294</p> <p>1 the public record. But what you're asking him to do is 2 to reopen communications that he may have had with 3 Lieutenant Governor Dewhurst which would be both 4 protected by the attorney/client privilege as well as 5 the legislative privilege.</p> <p>6 MS. WESTFALL: I'm asking about an article 7 that was published in the Texas Weekly so it seems to me 8 to be fairly public.</p> <p>9 MR. SWEETEN: You're asking about intent of 10 the statement. And the intent of the statement, again, 11 is a legislative privilege as well as the 12 attorney/client privilege. He can testify about whether 13 or not a statement was made, but he's not going to 14 testify about the subjective intent which is something 15 specifically prohibited in the court.</p> <p>16 A. I believe your earlier question was the purpose 17 of Lieutenant Governor Dewhurst to prevent non-citizen's 18 from voting.</p> <p>19 Q. (BY MS. WESTFALL) Yes.</p> <p>20 A. And I said no. The Texas Weekly article to which 21 you referred appears to have two versions of the letter. 22 And I can't remember which one was deemed to be the 23 official statement and which was a draft or not. The 24 short answer, again, is: I'm not aware of that being 25 the purpose for Lieutenant Governor to support the bill,</p>	<p style="text-align: center;">296</p> <p>1 MR. SWEETEN: Objection. Asked and 2 answered.</p> <p>3 A. I would repeat it's -- whether it's characterized 4 as an effective legislation, or a purpose, or an intent, 5 I'm not sure. But I think it's a possibility.</p> <p>6 Q. (By MS. WESTFALL) Are you aware of any incidents 7 of in-person voter impersonations in the State of Texas 8 in the last 20 years?</p> <p>9 MR. SWEETEN: Hold on. When you're 10 answering the question don't reveal thoughts, mental 11 impressions, opinions about legislation, including 12 discussions or conversations you had with legislatures, 13 legislative staff, State Agencies, Texas Legislative 14 Council. You can answer it based upon matters of the 15 public record or as you're sitting here right now the 16 question is what are you aware of. And it doesn't 17 invade those privileges then you can answer that 18 question.</p> <p>19 A. I don't recall how much of the public testimony 20 -- and are we talking about SB 14 now?</p> <p>21 Q. (By MS. WESTFALL) Yes.</p> <p>22 A. I don't recall how much of the public testimony 23 of SB 14 involved examples of in-person voter fraud.</p> <p>24 Q. I'm sorry. You don't recall any public 25 testimonies ever?</p>



<p style="text-align: center;">297</p> <p>1 A. I don't recall whether the public testimony 2 included examples of in-person voter fraud. 3 Q. How many incidences of mail-in voter fraud have 4 occurred in Texas in the last 20 years? 5 MR. SWEETEN: In answering this question 6 don't reveal matters that are subject to the legislative 7 privileges I have outlined today. 8 A. Right. I don't know that number. 9 Q. (By MS. WESTFALL) Have you heard of any voters 10 who did not participate in an election because they were 11 concerned that voter fraud would cancel out their vote? 12 MR. SWEETEN: Same objection, same 13 instructions. You can answer as to matters of the 14 public record, but don't reveal matters subject to the 15 legislative privilege. 16 A. Again, I don't recall all of the public provide 17 testimony specifically. 18 Q. (By MS. WESTFALL) Do you think Senate Bill 14, 19 if ultimately able to be implemented, will result in 20 increased turnout in Texas? 21 MR. SWEETEN: When you're answering the 22 question don't reveal matters that are subject to the 23 legislative privileges. You can answer if your answer 24 will not reveal those matters. 25 A. I don't know what will happen.</p>	<p style="text-align: center;">299</p> <p>1 A. Right. 2 Q. Are you aware of any conversations about that 3 failure in 2009 and how to avoid such failure in 2011? 4 MR. SWEETEN: You're asking about the 5 specific substance of the communication. You're asking 6 matters that would require him to reveal matters that 7 are subject to the legislative privilege. Accordingly, 8 I'm going to instruct him not to answer. Also you 9 potentially are asking questions that may relate to the 10 attorney/client privilege or that deliberative process 11 privilege. 12 Q. (By MS. WESTFALL) Do you have any testimony? 13 A. No. I'll assert the privilege. 14 Q. Is it true that the Lieutenant Governor reserves 15 low bill numbers for priority bills? 16 MR. SWEETEN: You can testify about matters 17 in the public record general procedure. 18 A. I believe that's right. 19 Q. (By MS. WESTFALL) And did Lieutenant Governor 20 not have any involvement with SB 14 until Senator Fraser 21 filed it in 2011 -- 2010, sorry. 22 Mr. Sweeten: Objection to the question as 23 vague. 24 A. I don't know if he did. 25 Q. (By MS. WESTFALL) If you learned that</p>
<p style="text-align: center;">298</p> <p>1 Q. (By MS. WESTFALL) Did the Lieutenant Governor 2 play any role in developing the strategy to insure that 3 Senate Bill 14 would be passed? 4 MR. SWEETEN: Objection. You're asking him 5 to reveal thoughts, mental impressions, conversations he 6 may have had with Lieutenant Governor Dewhurst as well 7 as his -- any specific roles he may have had or 8 discussions with legislators. So to the extent that 9 what she's asking calls upon matters that are subject to 10 legislative privilege, I would instruct you not to 11 answer the question. You can answer based upon the 12 public record or matters of -- that are public as to 13 those matters. 14 A. I'll assert the privilege. 15 Q. (By MS. WESTFALL) Are you aware of any 16 conversations surrounding how to prevent what happened 17 in 2009 with voter ID from happening again in 2011? 18 MR. SWEETEN: I'm going to instruct you on 19 the legislative privilege, don't reveal communications 20 that you've had regarding this bill. 21 A. Could you clarify what you mean? 22 MR. SWEETEN: Sorry. With the individuals 23 that I've already outlined previously. 24 Q. (By MS. WESTFALL) You testified earlier that 25 voter ID failed in 2009, right?</p>	<p style="text-align: center;">300</p> <p>1 Ms. Rathgeber just testified to that effect, would it 2 surprise you? 3 A. That she testified to the effect? 4 Q. That she testified that the Lieutenant Governor 5 had no involvement in SB 14 until Senator Fraser filed 6 it in November 2010? 7 MR. SWEETEN: Objection asked and answered. 8 A. Does it surprise me? 9 Q. (By MS. WESTFALL) Does it sound accurate? 10 MR. SWEETEN: Same objection asked and 11 answered. 12 A. I'm not aware of any such meetings or 13 involvement. 14 Q. (By MS. WESTFALL) Are you aware that the 15 Lieutenant Governor asked Senator Fraser to re-file his 16 bill in order to have a lower number? 17 MR. SWEETEN: Don't reveal communications 18 that are subject to legislative privilege. She's just 19 asking a very specific question about a conversation 20 that would require you to do so. I'll instruct you not 21 to answer. I would advise council that he can answer 22 about a specific conversation as long as it does not 23 reveal the subject matter of the communication which you 24 are doing so in your question. 25 Q. (By MS. WESTFALL) Do you have any testimony?</p>



<p style="text-align: center;">301</p> <p>1 A. No.</p> <p>2 Q. Are you asserting the privilege based on advice</p> <p>3 of council?</p> <p>4 A. Yes.</p> <p>5 Q. Are you aware of the Senate 2011 rules?</p> <p>6 A. Generally, yes.</p> <p>7 Q. And did those rules similar to the 2009 rules</p> <p>8 include Rule 5.11 concerning special orders and Voter ID</p> <p>9 Legislation?</p> <p>10 A. My memory is that they did, but I can't be</p> <p>11 certain.</p> <p>12 Q. Was SB 14 considered by any Senate Committees?</p> <p>13 A. I believe it was considered by the</p> <p>14 Committee-of-the-Whole.</p> <p>15 Q. What role did the Lieutenant Governor play in</p> <p>16 consideration of Senate Bill 14 by the</p> <p>17 Committee-of-the-Whole?</p> <p>18 MR. SWEETEN: You can testify as to matters</p> <p>19 of the public record. Don't reveal matters that are</p> <p>20 subject to the privilege or the attorney/client</p> <p>21 privilege, including conversations you had with</p> <p>22 Lieutenant Governor Dewhurst.</p> <p>23 A. My memory from the Committee was that Lieutenant</p> <p>24 Governor Dewhurst sat among the Senators and I can't</p> <p>25 recall if he asked questions of the witnesses or not. I</p>	<p style="text-align: center;">303</p> <p>1 result of those concerns being aired?</p> <p>2 MR. SWEETEN: Don't reveal thoughts, mental</p> <p>3 impressions, or opinions about legislator or</p> <p>4 communications that you've had with Lieutenant Governor</p> <p>5 Dewhurst, with legislators, legislative staff, State</p> <p>6 Agencies, Texas Legislative Council. You can answer to</p> <p>7 the extent that you can reveal matters that are not</p> <p>8 privileged or that are matters of the public record.</p> <p>9 A. Looking at the file version of the bill -- the</p> <p>10 final version of the bill, there are several changes</p> <p>11 that were made.</p> <p>12 Q. (By MS. WESTFALL) What were those?</p> <p>13 A. As we discussed earlier the Election</p> <p>14 Identification Certificate, the forms of ID acceptable,</p> <p>15 provisional ballot process. There may be others I'm</p> <p>16 forgetting. I can looking back through if you'd like.</p> <p>17 Q. And are these changes that were made from when it</p> <p>18 was filed to when it was passed?</p> <p>19 A. The ones I just described, yes.</p> <p>20 Q. And do any of those respond specifically to the</p> <p>21 concerns raised by legislators and others about the</p> <p>22 impact of the bill on minority voters?</p> <p>23 MR. SWEETEN: Again, don't reveal your</p> <p>24 mental impressions, your opinions about legislation, or</p> <p>25 the furtherance of the legislative process, or</p>
<p style="text-align: center;">302</p> <p>1 believe he voted in favor of the bill.</p> <p>2 Q. (By Ms. Montgomery) Did you play any role during</p> <p>3 the Committee's consideration of Senate Bill 14?</p> <p>4 MR. SWEETEN: Objection to the question as</p> <p>5 vague. You can answer to the extent you understand it.</p> <p>6 A. I was also in the Committee on the floor</p> <p>7 available as I sometimes was for questions from any</p> <p>8 Senator.</p> <p>9 Q. (By MS. WESTFALL) Were you charged with advising</p> <p>10 the Lieutenant Governor, providing him with information</p> <p>11 if Senators had inquiries of Lieutenant Governor about</p> <p>12 the bill?</p> <p>13 A. I mean, my job was to be general counsel for the</p> <p>14 Lieutenant Governor. So I acted like I would have on</p> <p>15 any other work day, I suppose.</p> <p>16 Q. During the floor debate on Senate Bill 14, did</p> <p>17 anyone raise concerns about the bill's impact on</p> <p>18 minority voters?</p> <p>19 A. My memory is that the public testimony did</p> <p>20 include testimony about that.</p> <p>21 Q. Who made -- who raised those concerns?</p> <p>22 A. My memory is that concerns were raised by some</p> <p>23 Senators in opposition to the bill, and perhaps from</p> <p>24 some of the invited, and public testimony.</p> <p>25 Q. Were any changes made to Senate Bill 14 as a</p>	<p style="text-align: center;">304</p> <p>1 communications that I've outlined previously. To the</p> <p>2 extent you can refer to matters of the public record,</p> <p>3 you can do so.</p> <p>4 A. My memory is that minutes were successfully added</p> <p>5 on the floor -- I mean, in the Committee to -- I don't</p> <p>6 remember for sure, by Senator Hinojosa and Senator Lucio</p> <p>7 who had earlier expressed concerns generally about the</p> <p>8 impact of the bill. And I believe they were both</p> <p>9 successful in adding amendments.</p> <p>10 Q. (By Ms. Montgomery) Do you remember what the</p> <p>11 substance of those amendments were?</p> <p>12 A. I believe Senator Hinojosa was added to related</p> <p>13 to the Concealed Handgun License as an acceptable form</p> <p>14 of ID. And I believe Senator Lucio dealt with whether</p> <p>15 expired licenses could be used or not. The length of</p> <p>16 time at which a license could be expired and still be</p> <p>17 acceptable as proof of ID.</p> <p>18 Q. And how do those amendments mitigate the impact</p> <p>19 of the bill on minority voters?</p> <p>20 MR. SWEETEN: On that question don't reveal</p> <p>21 any mental impressions, opinions, about legislation, or</p> <p>22 furtherance of the legislative process, or other matters</p> <p>23 that were subject to the conversations we discussed</p> <p>24 previously. To the extent you can refer to matter of</p> <p>25 the public record, you can do so.</p>



<p style="text-align: center;">305</p> <p>1 A. I think from what I remember in their testimony 2 their purpose in introducing those amendments was to 3 increase the acceptable forms of ID. Presumably that 4 would have an impact on all voters including minority 5 voters.</p> <p>6 Q. (By MS. WESTFALL) What does it mean when a 7 legislator says on the Senate floor, I am not advised?</p> <p>8 MR. SWEETEN: Objection. Calls for 9 speculation. You can answer to the extent you know.</p> <p>10 A. I think it depends on who is saying it and the 11 context.</p> <p>12 Q. (By MS. WESTFALL) When Senator Fraser said, "I 13 am not advised", dozens and dozens of times 14 during consideration of SB 14, how did you interpret 15 that statement?</p> <p>16 MR. SWEETEN: Objection calls for 17 speculation. Objection compound. You can answer.</p> <p>18 A. The way I take it, hearing it now, is that he 19 didn't know for sure. But I don't know.</p> <p>20 Q. (By MS. WESTFALL) Is it part of the Bill 21 Sponsor's role as the author of Senate Bill 14 to field 22 questions from other Senators on the floor during the 23 debate?</p> <p>24 A. It's typical for a Bill Sponsor to take 25 questions.</p>	<p style="text-align: center;">307</p> <p>1 speculation. You can answer to the extent that -- you 2 can answer.</p> <p>3 A. I don't know.</p> <p>4 Q. (By MS. WESTFALL) Is it possible that he knew 5 the answer to some of those questions but didn't want to 6 state the answers on the Senate floor?</p> <p>7 MR. SWEETEN: The same objection. Calls for 8 gross speculation but go ahead.</p> <p>9 A. Is it possible that he knew the answer to some of 10 the questions he said he was unadvised on. Again, 11 anything is possible but I certainly don't know.</p> <p>12 Q. (By MS. WESTFALL) Some minority legislators who 13 listen to the repeated assertion of, "I am not advised", 14 might have felt that the lack of substantive response 15 about the impact of SB 14 on minority voters might be -- 16 might be viewed as a lack of concern for those issues. 17 Did you have that feeling as you watched the debate?</p> <p>18 MR. SWEETEN: Objection. Relevance. 19 Objection, to the extent you're asking him about 20 communications he may have had with anybody, don't 21 reveal those. You can answer the question, though to 22 the extent she's asking you questions that are public 23 record. So, go ahead.</p> <p>24 A. So the question is: In my opinion, did Senator's 25 Fraser's handling of the debate in saying, "I am not</p>
<p style="text-align: center;">306</p> <p>1 Q. Would you say it's typical or atypical to say, "I 2 am not advised", as many times as Senator Fraser did 3 during the debate of SB 14?</p> <p>4 MR. SWEETEN: Let me interpose an objection. 5 Objection calls for speculation. You can answer to the 6 extent you know, based on public record.</p> <p>7 A. I would it's atypical for a debate to last that 8 long. And so if he said I'm not advised more often it 9 might be -- in part it's because the debate was so long.</p> <p>10 Q. (By MS. WESTFALL) How long was the debate of SB 11 14?</p> <p>12 A. I don't recall exactly. Hours and hours.</p> <p>13 Q. So you think it was routine for a Bill Sponsor to 14 have that response to so many questions based on the 15 length of the testimony -- I mean based on the length of 16 the consideration; is that your testimony?</p> <p>17 MR. SWEETEN: Objection. Calls for 18 speculation. Objection. Vague. You can answer.</p> <p>19 A. I would say it's probably not typical of a 20 Senator. But I honestly, I'm not sure it's typical of 21 Senator Fraser or not.</p> <p>22 Q. (By MS. WESTFALL) Do you believe that Senator 23 Fraser in fact did not know the answer to all those 24 questions?</p> <p>25 MR. SWEETEN: Objection. Calls for</p>	<p style="text-align: center;">308</p> <p>1 advised", that was the word you used --</p> <p>2 Q. (By MS. WESTFALL) Callous.</p> <p>3 A. Callous. Before you said -- That it was not -- 4 you phrased it differently.</p> <p>5 Q. That it was not -- I'm not sure what the question 6 was. But it was showing a lack of regard for those 7 issues.</p> <p>8 A. I did not and I don't interpret it as a lack of 9 regard for any particular population.</p> <p>10 Q. Are you aware of any communications concerning a 11 less restrictive means of achieving the same purpose of 12 SB 14 than what is set forth in SB 14?</p> <p>13 MR. SWEETEN: Okay. I'm going to instruct 14 you as to legislative privilege and specifically I'm 15 going to instruct you, don't reveal thoughts, mental 16 impressions, or opinions about legislation or in 17 furtherance of the legislative process. Don't reveal 18 communications you've had Lieutenant Governor Dewhurst, 19 members of the Lieutenant Governor's office, 20 legislators, legislative staff, State Agencies, or Texas 21 Legislative Council in answering the question.</p> <p>22 A. Okay, I -- could you explain what you mean by 23 less restrictive?</p> <p>24 Q. (By MS. WESTFALL) Are you aware of any 25 communications about whether there could be more</p>



<p style="text-align: center;">309</p> <p>1 expansive set of allowable forms of ID in SB 14 and 2 still accomplish the same purpose of the legislature in 3 enacting SB 14?</p> <p>4 MR. SWEETEN: You're asking him about 5 specific conversations and the substance of specific 6 conversations. I think those are subject to legislative 7 privilege. I'm going to instruct you not to answer on 8 that basis. If council wants to rephrase it without all 9 the substance of the conversation in it I will allow him 10 to answer the question as to who was involved, when the 11 conversation was, who were the parties, et cetera.</p> <p>12 Q. (By MS. WESTFALL) My question stands. Do you 13 have any testimony in response?</p> <p>14 A. I'll assert privilege.</p> <p>15 Q. Are you familiar with the Georgia Photo ID Law?</p> <p>16 A. Generally, yes.</p> <p>17 Q. Did you review it at the time when you were 18 involved in drafting Photo ID Laws?</p> <p>19 MR. SWEETEN: I think the question asks him 20 to reveal thoughts, his mental impressions, and opinions 21 in the process by which legislative -- Senate Bill 14 or 22 legislative acts, including Senate Bill 14, was passed. 23 You don't have to reveal your thought process with 24 respect to that. That's subject to the legislative 25 privilege.</p>	<p style="text-align: center;">311</p> <p>1 Q. (By MS. WESTFALL) And does the same hold true 2 with regard to the Indiana Photo ID Law?</p> <p>3 A. I would have to review the Indiana Law.</p> <p>4 Q. Could you mark this as U.S. 16?</p> <p>5 (Exhibit No. 82 was marked.)</p> <p>6 Q. (By MS. WESTFALL) Would you mark it as 82, 7 please? I'm handing you what's been marked as U.S. 82; 8 do you recognize this document?</p> <p>9 A. That looks like Indiana's Motor ID Law.</p> <p>10 Q. Can you take a look at the first page of the 11 document where it list allowable forms of ID and defines 12 proof of identification. Do you see that?</p> <p>13 A. Uh-huh. Yes.</p> <p>14 Q. And does it allow for use of photo ID issued by 15 the United States or the State of Indiana?</p> <p>16 A. Yes.</p> <p>17 Q. And is that different from SB 14?</p> <p>18 A. Yes.</p> <p>19 Q. Is it fair to say that SB 14 is more restrictive 20 than the Indiana Photo ID Law, on its face?</p> <p>21 A. There are probably fewer acceptable 22 identifications under the SB 14 Law.</p> <p>23 Q. Are you familiar with the amendments that were 24 offered to SB 14 on the Senate floor?</p> <p>25 A. Generally.</p>
<p style="text-align: center;">310</p> <p>1 Q. (By MS. WESTFALL) Are you aware that the Georgia 2 Photo ID Law allows for the use of photo ID issued by 3 any entity of the United States, Georgia, or another 4 State entity?</p> <p>5 MR. SWEETEN: You can answer whether you're 6 aware.</p> <p>7 Q. (By MS. WESTFALL) Based on the -- just based on 8 the face of the law?</p> <p>9 A. That sounds right to me.</p> <p>10 Q. And are you aware that the Georgia ID allows for 11 the use of valid employee cards?</p> <p>12 A. That sounds right.</p> <p>13 Q. Are you aware that the Georgia ID Law allows for 14 expired IDs to be used that are photo in nature?</p> <p>15 A. I don't know that. I don't recall that.</p> <p>16 Q. Is it fair to say that there are differences 17 between the Georgia Photo ID Law and SB 14?</p> <p>18 A. From what I remember, yes.</p> <p>19 Q. Is it fair to say that SB 14 provides for a more 20 restrictive and narrower set of forms of allowable photo 21 ID than does the Georgia Law?</p> <p>22 MR. SWEETEN: You can answer based upon the 23 text of the bills as they exist.</p> <p>24 A. My memory is that there are fewer forms of 25 acceptable ID in Texas than in Georgia.</p>	<p style="text-align: center;">312</p> <p>1 Q. Are you aware of an amendment introduced by 2 Senator Davis that would have allowed the use of ID that 3 is either unexpired or has expired sometime since the 4 past election?</p> <p>5 A. I don't recall that one specifically.</p> <p>6 Q. Did the Lieutenant Governor vote on any of the 7 amendments to SB 14?</p> <p>8 A. I don't recall that either.</p> <p>9 Q. Did you play any role in advising the Lieutenant 10 Governor about any of the amendments that were offered 11 to SB 14?</p> <p>12 MR. SWEETEN: You can answer, but don't 13 reveal the substance of the conversation.</p> <p>14 A. Certainly not for all of them. It's possible I 15 gave them some input on some of them.</p> <p>16 Q. (By MS. WESTFALL) Do you recall which ones?</p> <p>17 A. No.</p> <p>18 Q. Are you aware of any amendments that would have 19 mitigated the impact of Senate Bill 14 on minority 20 voters as you sit here today?</p> <p>21 MR. SWEETEN: Objection. I think you are 22 going into his mental processes, his mental impressions 23 about legislation or furtherance of the legislative 24 process. If you want to ask as to the text of the bill, 25 sitting here he can answer that, but otherwise I think</p>



<p style="text-align: center;">313</p> <p>1 that's legislative privilege.</p> <p>2 Q. (By MS. WESTFALL) Do you have an answer?</p> <p>3 A. So the question is, please?</p> <p>4 Q. Are you aware of any amendments that would have</p> <p>5 mitigated the impact of Senate Bill 14 on minority</p> <p>6 voters?</p> <p>7 A. My memory is --</p> <p>8 MR. SWEETEN: Same objection and</p> <p>9 instruction.</p> <p>10 A. My memory is from the debate that some amendments</p> <p>11 were offered and the author maybe said that that was the</p> <p>12 intended effect. But I'm not sure which of those were</p> <p>13 adopted or if that was an actual effect.</p> <p>14 Q. (By MS. WESTFALL) I see. When did the Senate</p> <p>15 pass Senate Bill 14?</p> <p>16 A. I don't remember the date. It would have been in</p> <p>17 January of 2011.</p> <p>18 Q. Was it -- was it approximately 2 weeks from the</p> <p>19 date of filing of the bill or receipt of the bill and</p> <p>20 the Senate until when it was passed by the Senate in</p> <p>21 January 2011; is that about right?</p> <p>22 A. That sounds about right.</p> <p>23 Q. Is that kind of unusual for a bill to be received</p> <p>24 by the Senate and passed within two weeks?</p> <p>25 A. It's not unusual for an emergency bill.</p>	<p style="text-align: center;">315</p> <p>1 Q. (By MS. WESTFALL) Are you aware of any</p> <p>2 conversations between Lieutenant Governor or staff</p> <p>3 related to any amendments offered by opponents of the</p> <p>4 bill?</p> <p>5 MR. SWEETEN: You can answer.</p> <p>6 A. Communications between opponents of the bill and</p> <p>7 Lieutenant Governor staff. So did I have those</p> <p>8 conversations or did someone on our staff? I think</p> <p>9 there were conversations on the floor during the debate.</p> <p>10 Q. (By MS. WESTFALL) Any other conversations that</p> <p>11 did not occur in the debate?</p> <p>12 A. I don't recall. I'm not sure.</p> <p>13 Q. Did you have -- did you monitor Senate Bill 14</p> <p>14 once it was passed to the Senate and went to the House?</p> <p>15 A. Yes.</p> <p>16 Q. Could you describe your monitoring of Senate Bill</p> <p>17 14 once it went to the House?</p> <p>18 MR. SWEETEN: You can answer, but in doing</p> <p>19 so don't reveal communications you've had with</p> <p>20 Lieutenant Governor with Legislators, Legislative Staff,</p> <p>21 State Agencies, Texas Legislative Council.</p> <p>22 A. The bulk of my activity was charting the progress</p> <p>23 of the bill, being -- again, as I mentioned earlier,</p> <p>24 being available as a resource for anyone including House</p> <p>25 and staff, House members and their staffs on the lawyer</p>
<p style="text-align: center;">314</p> <p>1 Q. I see. And how many emergency bills are you</p> <p>2 aware of based on your experience working for the</p> <p>3 Lieutenant Governor?</p> <p>4 A. I think there were six or eight last session.</p> <p>5 There are at least a few every session.</p> <p>6 Q. Were they all passed in the Senate within</p> <p>7 two weeks in January?</p> <p>8 A. I don't know.</p> <p>9 Q. Do you know of any others that were passed within</p> <p>10 two weeks in January?</p> <p>11 A. I don't recall examples.</p> <p>12 Q. Did the Lieutenant Governor play any role in</p> <p>13 conferring with or having any discussions with Senators</p> <p>14 about amendments?</p> <p>15 MR. SWEETEN: Objection. I think you're</p> <p>16 asking him to reveal conversations that he may have had</p> <p>17 with Lieutenant Governor Dewhurst, that he or Lieutenant</p> <p>18 Governor Lieutenant Dewhurst may have had the</p> <p>19 legislators, legislative staff, State Agencies, Texas</p> <p>20 Ledge Council, or to reveal thoughts, mental</p> <p>21 impressions, or opinions about the legislation. You can</p> <p>22 answer as to matters that are of public record.</p> <p>23 A. I'm not aware of any public conferring between</p> <p>24 Lieutenant Governor and senators. And I'll assert</p> <p>25 privilege as to any private conversation.</p>	<p style="text-align: center;">316</p> <p>1 or staffer from the Senate.</p> <p>2 Q. (By MS. WESTFALL) Did the Lieutenant Governor</p> <p>3 play any role in the Conference Committee's</p> <p>4 consideration of Senate Bill 14?</p> <p>5 MR. SWEETEN: You can testify as to matters</p> <p>6 of public record. Don't reveal communications that</p> <p>7 would be subject to legislative privilege.</p> <p>8 A. Yeah. I'm not aware of any sort of public</p> <p>9 pronouncements of his role with members of the</p> <p>10 committee.</p> <p>11 Q. He appointed the conferees; did he not?</p> <p>12 A. Yeah. To clarify. Beyond appointing them. But</p> <p>13 I think your questions was the process of that</p> <p>14 Committee.</p> <p>15 Q. Did -- are you familiar with the changes to SB 14</p> <p>16 that occurred during conference?</p> <p>17 A. I would -- I would -- I don't recall. Is the</p> <p>18 short answer. I would need to look at different</p> <p>19 versions to be sure.</p> <p>20 Q. And was the Election Identification Certificate</p> <p>21 Provision inserted into the bill in conference?</p> <p>22 A. It's possible.</p> <p>23 Q. Are you aware of whether that provision and</p> <p>24 perhaps others outside of the versions of SB 14 passed</p> <p>25 in the House and Senate were put into the bill in</p>



<p style="text-align: center;">317</p> <p>1 conference?</p> <p>2 A. I can't be sure about the timing of it.</p> <p>3 Q. Are you aware that during the conference</p> <p>4 Committee, the committee removed a provision from the</p> <p>5 bill that would have required voter education targeted</p> <p>6 at low income and minority voters?</p> <p>7 A. I don't recall that.</p> <p>8 Q. Are you aware of any conversations involving</p> <p>9 Lieutenant Governor on whether SB 14 might</p> <p>10 disproportionately impact minority voters?</p> <p>11 MR. SWEETEN: I'm going to object based upon</p> <p>12 legislative privilege. Don't reveal, in answering the</p> <p>13 questions she's asking, reveal substance of</p> <p>14 communications that Mr. Dewhurst may have had with</p> <p>15 others. Don't reveal those. Those are subject to the</p> <p>16 attorney/client privilege or the legislative privilege.</p> <p>17 A. I'm not aware of any public discussions like that</p> <p>18 and I'll assert privilege on other internal</p> <p>19 communications.</p> <p>20 Q. (By MS. WESTFALL) Are you aware of any</p> <p>21 communications that the Lieutenant Governor had about an</p> <p>22 obligation to adhere to Section 5 of the Voting Rights</p> <p>23 Act with regard to Senate Bill 14?</p> <p>24 MR. SWEETEN: Don't reveal matters that are</p> <p>25 subject to the attorney/client privilege or matters of</p>	<p style="text-align: center;">319</p> <p>1 A. Voted for. Sorry.</p> <p>2 MR. SWEETEN: Don't reveal communications of</p> <p>3 Legislators. Don't reveal matters of the public record.</p> <p>4 A. Right. Again, from the public testimony my</p> <p>5 memory is that there were general discussions about the</p> <p>6 impact of the bill and that included opponents and</p> <p>7 proponents.</p> <p>8 MS. WESTFALL: Thank you. Could you mark</p> <p>9 this as Exhibit 83.</p> <p>10 (Exhibit No. 83 was marked.)</p> <p>11 Q. (By MS. WESTFALL) I'm handing you what's been</p> <p>12 marked as U.S. 83; do you recognize this exhibit?</p> <p>13 A. It looks like a press release from Lieutenant</p> <p>14 Governor David Dewhurst.</p> <p>15 Q. Can you review it and let me know when you've had</p> <p>16 a chance to take a look at it?</p> <p>17 A. It looks like it was a late January press release</p> <p>18 saying that he's glad that it passed the Senate.</p> <p>19 Q. And can you see that it indicates increasing</p> <p>20 public confidence in our election process by insuring</p> <p>21 only U.S. citizens who are legally eligible vote in</p> <p>22 Texas. Do you see that statement?</p> <p>23 A. Yes.</p> <p>24 Q. How does Senate Bill 14 promote that?</p> <p>25 MR. SWEETEN: You're asking him to reveal</p>
<p style="text-align: center;">318</p> <p>1 legislative privilege. You can reveal public testimony</p> <p>2 on the issue.</p> <p>3 A. I don't recall all of his public statements and</p> <p>4 I'll assert privilege as to internal communications.</p> <p>5 Q. (By MS. WESTFALL) Have you ever heard of any</p> <p>6 Texas State Legislator who voted in favor of SB 14,</p> <p>7 saying that it would prevent racial or ethnic minorities</p> <p>8 from voting in Texas?</p> <p>9 MR. SWEETEN: Did you say testimony,</p> <p>10 Elizabeth? Can you read the question?</p> <p>11 Q. (By MS. WESTFALL) Have you ever heard any Texas</p> <p>12 State Legislator who voted in favor of Senate Bill 14</p> <p>13 say that it would prevent racial or ethnic minorities</p> <p>14 from voting in Texas?</p> <p>15 MR. SWEETEN: Don't reveal communications</p> <p>16 that you've had with Legislators, Legislative Staff,</p> <p>17 other productive communications, but you can answer to</p> <p>18 the extent you can refer to matters of the public</p> <p>19 record.</p> <p>20 A. I think, again, during the open testimony</p> <p>21 there were, you know, there were probably members of the</p> <p>22 Senate who asserted that that would be the impact. But</p> <p>23 that's, I think, as close as a yes as I can get.</p> <p>24 Q. (By MS. WESTFALL) I was asking whether any Texas</p> <p>25 State Legislator voted in favor?</p>	<p style="text-align: center;">320</p> <p>1 matters that are subject to the legislative privilege.</p> <p>2 Do not reveal those matters. You can reveal matters</p> <p>3 that are based on the public record.</p> <p>4 A. As I said before, I think, to the extent that SB</p> <p>5 14 is designed to increase the integrity of the election</p> <p>6 process and discourage ineligible voters from</p> <p>7 fraudulently voting, that the statement would reflect</p> <p>8 that purpose.</p> <p>9 Q. (By MS. WESTFALL) Notwithstanding all of the</p> <p>10 testimony that you gave earlier today about how voter</p> <p>11 registration is when you say you're a citizen and voting</p> <p>12 and Photo ID Laws stop in-person voter impersonation; is</p> <p>13 that right?</p> <p>14 MR. SWEETEN: Objection to the question as</p> <p>15 argumentative, vague. Also, don't reveal matters of</p> <p>16 legislative privilege in answering the question.</p> <p>17 A. I think what I said earlier was that making</p> <p>18 elections more secure would have the general effect of</p> <p>19 deterring all sorts of voter fraud.</p> <p>20 Q. (By MS. WESTFALL) Do you believe</p> <p>21 Senator Dewhurst -- not Senator -- strike that.</p> <p>22 Do you believe Mr. Dewhurst approved this press</p> <p>23 release before it was released?</p> <p>24 MR. SWEETEN: Objection. Calls for</p> <p>25 speculation. You can answer it if you know.</p>



<p>321</p> <p>1 A. I don't know. 2 Q. (By MS. WESTFALL) Do press releases go out under 3 his name that he doesn't approve of? 4 A. I don't know. 5 Q. Who would know? 6 A. I imagine Mike Walz would know, the press 7 secretary. 8 Q. And certainly Mr. Dewhurst would know, right? 9 A. He might. 10 Q. He might know whether he said this or not? 11 A. I don't know how many press releases go out and 12 whether he signs off on some, or all, or none of them. 13 MR. SWEETEN: How are we doing on time? 14 MS. WESTFALL: We're getting there. 15 MR. SWEETEN: I'm asking the court reporter 16 for time total. 17 COURT REPORTER: It is 6 hours and 27 18 minutes. 19 MS. WESTFALL: And I would ask that given 20 number of objections that Mr. Dunn be permitted to have 21 some time. I'm close to completing my examination for 22 the time being, of course, leaving this deposition open, 23 but given number of objections, and privilege 24 assertions, and discussions between council on this 25 subject I would ask your indulgence in allowing Mr. Dunn</p>	<p>323</p> <p>1 pending motions to compel on legislative privilege that 2 have not yet been ruled upon. There are open questions 3 on these issues an it has taken the time for the two of 4 us to discuss them on the record. 5 MR. SWEETEN: It has been very clear what my 6 position was going to be with respect to legislator 7 privilege. We've articulated it over and over again 8 within filings with the court. You understand what my 9 position is on this and you have repeatedly asked 10 questions that invade the legislative privilege and 11 invade the other privileges we have discussed today. 12 Nevertheless there is no point sitting here and debating 13 it. I will let you continue your questioning. When Mr. 14 Dunn has questions, we will take that matter up then. 15 MR. DUNN: And just -- this will probably 16 help. I will have very little to no questions. 17 MR. SWEETEN: Okay. Yeah. That helps. 18 MR. DUNN: I didn't want to interrupt what 19 was an awesome oration by both sides. 20 MS. WESTFALL: Could you please mark this as 21 84? 22 (Exhibit No. 84 was marked.) 23 Q. (By MS. WESTFALL) You've been handed what's been 24 marked U.S. 84. Do you recognize this document? 25 A. It talking points for a speech.</p>
<p>322</p> <p>1 to have a few moments once I am finished with the exam. 2 MR. SWEETEN: Well, I mean the Federal Rules 3 allow for 7 hours. You have spent much of this 4 deposition asking him about questions that are very, 5 very, clearly implicating legislative privilege. We 6 have court orders on this subject. You're asking 7 questions that are -- that the court is already very 8 clearly indicated are matters of privilege. You have 9 spent much of your questioning doing that today. So I 10 understand that I have objected but I have had to object 11 because you have gone way beyond the scope of what is 12 permissible with respect to our assertion of this 13 privilege and you have done it repeatedly. So my 14 response to that is, we'll let Mr. Dunn question the 15 witness but as far as your implication that this 16 deposition has gone on this long as a result of me. I 17 absolutely reject that proposition. 18 MS. WESTFALL: Well, I wasn't suggesting 19 that. I was saying council had been having, we have 20 been having extensive discussions about privilege. I 21 have asked repeated questions about communications, 22 which are permissible. I have asked repeated questions 23 about purpose, which are permissible. We had a 24 disagreement about the scope and application of the 25 orders that have been ordered in this case. We have</p>	<p>324</p> <p>1 Q. Did you draft those? 2 A. No. 3 Q. Who drafted this? 4 A. I don't know. 5 Q. Do you see that it is dated May 27, when the bill 6 was signed? 7 A. Well, there's another date above that. But yes. 8 Q. You're right. It looks like there are two dates. 9 Could you read for the record those two dates? 10 A. One says 5/26/11 and the other one says May 27, 11 2011. 12 Q. Did LRT refer to an individual's initials or 13 something else? 14 A. I don't know. 15 Q. Do you see on the second page, it indicates a 16 talking point that generations of Americans have fought 17 and died for the principal of one U.S. citizen, one 18 vote. Do you see that? 19 A. Yes. 20 Q. And does this document suggest to you that part 21 of Mr. Dewhurst's support for the bill was that it is 22 protecting the right of U.S. citizens to vote. Is that 23 how you would interpret this bullet? 24 MR. SWEETEN: When you're answering the 25 question don't reveal communications you've had with</p>



<p>325</p> <p>1 Lieutenant Governor Dewhurst. Those are privileged 2 under legislative privilege and attorney/client 3 privilege. You can answer to the extent that you are 4 not revealing matters of privilege.</p> <p>5 A. I don't know is the short answer. I don't know 6 if this is the -- the speech he gave. I don't know if 7 he wrote this draft. So I don't know if it's an 8 accurate reflection of his purpose, or intent, or 9 anything else.</p> <p>10 Q. (By MS. WESTFALL) Who would know?</p> <p>11 A. I suppose whoever wrote it.</p> <p>12 Q. And Mr. Dewhurst would also know; is that right?</p> <p>13 A. Perhaps. Again that's possible. I don't know if 14 this is his speech or interview that he gave or if it 15 was just something prepared for his possible use.</p> <p>16 Q. Thank you.</p> <p>17 MS. WESTFALL: Could you mark this as 85? (Exhibit No. 85 was marked.)</p> <p>18 Q. (By MS. WESTFALL) You've been handed what's been 19 marked as U.S. 85; do you recognize this document?</p> <p>20 A. Yes.</p> <p>21 Q. What is it?</p> <p>22 A. It's talking points on voter ID.</p> <p>23 Q. And how do you recognize this document?</p> <p>24 A. I wrote it.</p>	<p>327</p> <p>1 A. Right. I mean, on its face it says over 6,000 2 applications were rejected. That seems to me to 3 implicate the security of the elections.</p> <p>4 Q. (By MS. WESTFALL) How does Photo ID Law -- 5 requiring photo ID at the polls on election day, stop 6 fraudulent registration applications?</p> <p>7 MR. SWEETEN: Don't reveal matters of 8 legislative privilege. You can answer.</p> <p>9 A. I think as I said earlier today, it's additional 10 levels of security make the elections more secure and 11 that if an election is more secure, I think fraudulent 12 voting is less likely, including fraudulent registration 13 applications.</p> <p>14 By MS. WESTFALL: Could you mark this as 86? (Exhibit No. 86 was marked.)</p> <p>15 Q. (By MS. WESTFALL) You have each been 16 handed what's been marked as U.S. --</p> <p>17 MR. SWEETEN: Can I have a copy?</p> <p>18 MS. WESTFALL: Sure. I don't know.</p> <p>19 MR. SWEETEN: I'll just look on. That's 20 fine.</p> <p>21 Q. (By MS. WESTFALL) Thank you. You've been handed 22 what's been marked U.S. 86. Do you recognize this 23 document?</p> <p>24 A. It's an overview of the process overview by the</p>
<p>326</p> <p>1 Q. Do you see where, in the first bullet, it refers 2 to fraudulent registration applicants or applications?</p> <p>3 A. Yes.</p> <p>4 Q. And was this -- were these talking points by the 5 way in support of SB 14?</p> <p>6 A. I don't recall if they were generally about voter 7 ID or if they were for a particular bill. I mean, it 8 says 82 R, but I don't know if it was for -- the timing 9 of it compared to the legislation.</p> <p>10 Q. But 82 R referred to?</p> <p>11 A. 82nd regular session?</p> <p>12 Q. And that was 2011 was it not?</p> <p>13 A. Correct.</p> <p>14 Q. And could you explain why one talking point in 15 support of photo ID related to fraudulent registration 16 applicants and listed as an example application 17 submitted by non-citizens?</p> <p>18 MR. SWEETEN: Don't reveal matters subject 19 to the legislative privilege.</p> <p>20 A. So the question is why are these examples used?</p> <p>21 Q. (By MS. WESTFALL) Yes.</p> <p>22 A. They're examples of fraudulent registration 23 applications.</p> <p>24 Q. And how does that support the case for photo ID?</p> <p>25 MR. SWEETEN: Same objection.</p>	<p>328</p> <p>1 Justice Department.</p> <p>2 Q. And how are you familiar with this document?</p> <p>3 A. It looks like something I drafted but I'll have 4 to double-check.</p> <p>5 Q. Let me know when you've had a chance to review?</p> <p>6 A. Okay.</p> <p>7 Q. Did you draft this document?</p> <p>8 A. I think so.</p> <p>9 Q. Do you know when you drafted this document?</p> <p>10 A. I can't be sure if it was 2009 or 2011. Well, it 11 says, Georgia is the only Section 5 State with the Photo 12 ID requirement. So I'm guessing that might have been 13 '07 or '09. I can't remember when Indiana's law went 14 into effect or any of the other states.</p> <p>15 Q. And you see that it indicates you wrote about 16 retrogressive effect in this document?</p> <p>17 A. Where are we at? Is there a retrogressive 18 effect? Yes.</p> <p>19 Q. By the way, to whom was this document circulated?</p> <p>20 A. I can't recall.</p> <p>21 Q. Was it internal to the Lieutenant Governor's 22 office or was it to other Senate staff?</p> <p>23 A. I can't recall.</p> <p>24 Q. What was -- what did you do with this document 25 after you drafted it?</p>



329

1 A. It was almost certainly for use in my office. I
 2 just can't remember if it was also distributed to other
 3 people or not and by whom.

4 Q. Did you have any conversations or discussions
 5 with anyone about retrogressive effect after you
 6 circulated this document, within your office?

7 MR. SWEETEN: Don't reveal communications
 8 you had with anyone within your office. Attorney/client
 9 privilege.

10 Q. (By MS. WESTFALL) Well, to the extent there's
 11 any attorney/client privilege it seems to have been
 12 ordered to have been produced in this litigation. So
 13 it's been produced.

14 MR. SWEETEN: He doesn't have to reveal
 15 communications that he's had with anyone in his office
 16 That's subject to the attorney/client privilege. You
 17 can ask about the document. I'm freely allowing you to
 18 ask about the document.

19 MS. WESTFALL: I'm asking about
 20 conversations about the document.

21 MR. SWEETEN: You can answer whether
 22 conversations occurred.

23 MS. WESTFALL: And this is not about
 24 legislative privilege. This is a different privilege,
 25 Mr. Sweeten. This has now been produced in litigation.

331

1 MR. SWEETEN: You can ask about the
 2 existence of them you can ask about this document to the
 3 extent that whatever you want to ask.

4 Q. (By MS. WESTFALL) Did you have any conversations
 5 with anyone in your office about this document after you
 6 circulated it?

7 MR. SWEETEN: You can answer.

8 A. Probably.

9 Q. (By MS. WESTFALL) Did you have a conversation
 10 with Mr. Dewhurst about this document after you
 11 circulated it?

12 A. I don't recall.

13 Q. Did you have conversation with Ms. Rathgeber, or
 14 Mr. Brunson about this document, or Mr. Battle?

15 A. Probably all of them.

16 Q. Were any steps taken as a result of your
 17 circulation of this document?

18 A. I don't know that it requires steps. It looks
 19 like it's a summary of State of preclearance, in
 20 general, and this one opinion, legal review, in
 21 particular.

22 Q. Were there any efforts after you circulated this
 23 document to determine whether SB 14 or 362, whatever
 24 bill was at issue when you circulated this memo, whether
 25 that bill would have an impact on Hispanic and Black

330

1 I can examine the witness on this document.

2 MR. SWEETEN: You can examine him based upon
 3 the document. That doesn't allow you to go into any
 4 communications he's had within the realm of the
 5 attorney/client communication with individuals in his
 6 office.

7 MS. WESTFALL: I disagree with your view of
 8 attorney/client privilege and what I can examine the
 9 witness on.

10 MR. SWEETEN: So is it your position then
 11 that in light of this document you can ask any question
 12 about the attorney/client privilege, because I reject
 13 that.

14 MS. WESTFALL: I can ask him about what
 15 happened with this document and conversations about this
 16 document.

17 MR. SWEETEN: You can ask him what happened
 18 with this document, if he had conversations about the
 19 document, I'm not objecting to that. But he is not
 20 going to reveal the specifics of his communication
 21 surrounding the document.

22 MS. WESTFALL: In other words you're only
 23 going to let me examine him about the existence of
 24 communications and foundational questions; is that what
 25 you're saying.

332

1 voters disproportionately?

2 A. I don't recall any -- I don't recall from the
 3 public record whether evidence to that effect was
 4 introduced or not.

5 Q. But we're now dealing with a different privilege.
 6 I'm asking you a different set of questions. Your
 7 council is letting you be examined -- I realize it's
 8 late in the day -- based on a different set of
 9 privileges. I'm asking whether any -- not based on the
 10 public record -- were any steps taken after you
 11 circulated this memo concerning retrogressive effect and
 12 the legal standard, were any steps taken in response to
 13 the circulation of this memo?

14 A. I'm not aware of specific steps. Again, there
 15 was -- I'm not aware of specific steps.

16 Q. And you see underneath retrogressive effect, you
 17 indicate the issue of less retrogressive alternatives,
 18 do you see that section?

19 A. Right.

20 Q. Did you have any conversations about that topic
 21 with anyone in your office after your circulated this
 22 memo?

23 A. Probably the same list that I gave earlier.

24 Q. Ms. Rathgeber, Mr. Brunson?

25 A. Mr. Battle.



ESQUIRE
DEPOSITION SOLUTIONS

Toll Free: 800.211.DEPO
Facsimile: 512.328.8139

Suite 220
3101 Bee Caves Road
Austin, TX 78746
www.esquiresolutions.com

<p>333</p> <p>1 Q. Anyone else?</p> <p>2 A. In my office, no.</p> <p>3 Q. And are you aware of any less retrogressive</p> <p>4 alternatives that were pursued after you circulated this</p> <p>5 memo?</p> <p>6 MR. SWEETEN: Don't reveal matters that are</p> <p>7 subject to the legislative privilege. In other words,</p> <p>8 if you had communications with Legislators, Legislative</p> <p>9 Staff, State agencies, Texas Ledge Council, in answering</p> <p>10 that question.</p> <p>11 A. Again, without knowing the timing I can't be</p> <p>12 sure. The bills, as I've reviewed them today, have a</p> <p>13 sort of spectrum of alternatives. Some, to use your</p> <p>14 word, less restrictive than others. But I can't be sure</p> <p>15 without knowing when this was produced.</p> <p>16 Q. (By MS. WESTFALL) Are you aware, at any time,</p> <p>17 during consideration of any of the bills to which you've</p> <p>18 testified today that there were considerations of less</p> <p>19 retrogressive alternatives, based on the legal standard</p> <p>20 you set forth in this memo?</p> <p>21 MR. SWEETEN: In answering the question</p> <p>22 don't reveal matters of legislative privilege, don't</p> <p>23 reveal discussions she's asking you as to this memo.</p> <p>24 A. The question is: Was there consideration of --</p> <p>25 Q. (By MS. WESTFALL) Less retrogressive</p>	<p>335</p> <p>1 essentially a summary of that one opinion, is what it</p> <p>2 appears to be.</p> <p>3 Q. And do you see here you list education efforts</p> <p>4 targeted among minority communities?</p> <p>5 A. Yes.</p> <p>6 Q. And I believe we just testified about an</p> <p>7 amendment offered to provide voter education to minority</p> <p>8 communities that was not adopted by the Senate; is that</p> <p>9 correct?</p> <p>10 A. Yes, you did mention that.</p> <p>11 Q. So ultimately Senate Bill 14 does not include</p> <p>12 such education efforts that are targeted to minority</p> <p>13 communities. Is that correct?</p> <p>14 A. I don't recall that it does.</p> <p>15 Q. And does Senate Bill 14 include any program</p> <p>16 designed to provide photo ID's in isolated or</p> <p>17 impoverished areas?</p> <p>18 A. Does it include those?</p> <p>19 Q. In the bill, as passed?</p> <p>20 A. I don't think it does.</p> <p>21 Q. And are there any other programs that were</p> <p>22 designed to minimize the impact of the bill on minority</p> <p>23 voters included in Senate Bill 14 as passed?</p> <p>24 MR. SWEETEN: In answering the question</p> <p>25 don't reveal matters that are subject to legislative</p>
<p>334</p> <p>1 alternatives?</p> <p>2 A. I think there were consideration of lots of</p> <p>3 things, I suppose, yes.</p> <p>4 Q. What were those alternatives?</p> <p>5 A. I don't recall specifically.</p> <p>6 Q. Do you see underneath, you list Mitigating</p> <p>7 Effects. Do you see that?</p> <p>8 A. Uh-huh.</p> <p>9 Q. By the way, before I ask a question about that.</p> <p>10 Do you see the number indicated at the top right-hand</p> <p>11 corner? 552.111?</p> <p>12 A. It looks -- I see a number. It looks like it</p> <p>13 might be 557.</p> <p>14 Q. You may be right. Does this indicate to you --</p> <p>15 do you have any indication of an internal number that</p> <p>16 would help you to remember when you wrote this document?</p> <p>17 A. No.</p> <p>18 Q. Okay. Do you see where you write about</p> <p>19 mitigating effects in this document?</p> <p>20 A. I do.</p> <p>21 Q. Did you have conversations about mitigating</p> <p>22 effects with the same persons in your office you</p> <p>23 testified to earlier?</p> <p>24 A. I probably discussed each of those things with</p> <p>25 Mr. Brunson, Ms. Rathgeber, and Mr. Battle since it was</p>	<p>336</p> <p>1 privilege. That includes thoughts, mental impressions,</p> <p>2 opinions about legislation or in furtherance of the</p> <p>3 legislative process, including communications with</p> <p>4 legislators or legislative staff. Okay?</p> <p>5 A. I think the voter education provision and the</p> <p>6 free education -- I mean, Election ID Certificate</p> <p>7 arguably are designed to minimize the impact of minority</p> <p>8 voters.</p> <p>9 Q. (By MS. WESTFALL) Thank you. And anything else</p> <p>10 in Senate Bill 14?</p> <p>11 A. I'm not sure. I'd have to review it.</p> <p>12 Q. Thank you.</p> <p>13 MS. WESTFALL: Could you mark this as 87.</p> <p>14 (Exhibit No. 87 was marked.)</p> <p>15 Q. (By MS. WESTFALL) I've handed you what's been</p> <p>16 marked as U.S. 87. Do you recognize this document?</p> <p>17 A. No. It looks like it's a letter to Governor</p> <p>18 Perry, Lieutenant Governor Dewhurst.</p> <p>19 Q. Okay.</p> <p>20 MS. WESTFALL: Can you mark this as 88,</p> <p>21 please?</p> <p>22 (Exhibit No. 88 was marked.)</p> <p>23 Q. (By MS. WESTFALL) You've been handed what's been</p> <p>24 marked as U.S. 88; do you recognize this document?</p> <p>25 A. It looks like it's a letter to Mr. Beck from</p>



<p style="text-align: center;">337</p> <p>1 Lieutenant Governor Dewhurst.</p> <p>2 Q. Is Mr. Beck presumably a constituent?</p> <p>3 A. He lives in Texas so, yes.</p> <p>4 Q. And who drafts responses to constituent mail in</p> <p>5 Mr. Dewhurst's office?</p> <p>6 A. It depends. Sometimes it's the staff. Sometimes</p> <p>7 it's the press office. Sometimes it's a combination.</p> <p>8 Q. Do you see in the second paragraph where it says,</p> <p>9 Voter ID will help stamp out voter fraud and increase</p> <p>10 public confidence in our election process by insuring</p> <p>11 that only U.S. citizens who are legally eligible vote in</p> <p>12 Texas elections?</p> <p>13 A. I see that.</p> <p>14 Q. Do you see that this letter is dated February 8,</p> <p>15 2011?</p> <p>16 A. Yes.</p> <p>17 Q. So it was right after the Senate passed Senate</p> <p>18 Bill 14; is that right?</p> <p>19 A. Uh-huh. Yes.</p> <p>20 Q. Can you explain why Mr. Dewhurst would assert</p> <p>21 that it would -- voter ID would help ensure that only</p> <p>22 U.S. citizens are voting in Texas elections?</p> <p>23 MR. SWEETEN: Objection. Calls for</p> <p>24 speculation. Also asks him to reveal thoughts, mental</p> <p>25 impressions, opinions about legislation. Also requires</p>	<p style="text-align: center;">339</p> <p>1 A. No.</p> <p>2 Q. Was one of Mr. Dewhurst's purposes in advancing</p> <p>3 and promoting Senate Bill 14 to prevent non-citizens</p> <p>4 from voting?</p> <p>5 MR. SWEETEN: Objection. You're asking for</p> <p>6 him to glean the subjective intent of Lieutenant</p> <p>7 Governor Dewhurst and that is a matter that is outside</p> <p>8 of what -- of the purpose question that you've been</p> <p>9 asking so I'm going to object to him answering that</p> <p>10 question based upon the court's order.</p> <p>11 Q. (By MS. WESTFALL) Are you following the advice</p> <p>12 of council?</p> <p>13 A. Yes.</p> <p>14 Q. Who is Jesse Ancira?</p> <p>15 A. Ancira.</p> <p>16 Q. Ancira.</p> <p>17 A. I believe he is general counsel for Speaker Joe</p> <p>18 Strauss.</p> <p>19 Q. Does he handle voter ID for Speaker Strauss?</p> <p>20 A. I don't know his exact role on that issue.</p> <p>21 MS. WESTFALL: Could you mark this as 89?</p> <p>22 (Exhibit No. 89 was marked.)</p> <p>23 Q. (By MS. WESTFALL) You have been handed what's</p> <p>24 marked as U.S. 89; do you recognize this document?</p> <p>25 A. Looks like an overview of voter ID issues, like a</p>
<p style="text-align: center;">338</p> <p>1 him to reveal communications with Lieutenant Governor</p> <p>2 Dewhurst. If you can answer the question without</p> <p>3 revealing matters of legislative privilege or matters of</p> <p>4 related to the attorney/client confidentiality then you</p> <p>5 can answer the question.</p> <p>6 A. I guess I would refer to my earlier answers to</p> <p>7 similar questions. The bill -- the purpose of the bill</p> <p>8 is to ensure that elections are secure. That includes,</p> <p>9 meaning that -- the meaning that voters are eligible to</p> <p>10 vote and if you're not a U.S. citizen then you're not</p> <p>11 eligible to vote. So that's the connection.</p> <p>12 Q. (By MS. WESTFALL) And Remember when I asked you</p> <p>13 about the purposes of Senate Bill 14 and you said ensure</p> <p>14 election integrity, increase voter confidence, do you</p> <p>15 remember that?</p> <p>16 A. Huh-uh.</p> <p>17 Q. And do you remember when I asked you whether the</p> <p>18 -- one of the purposes advanced by Mr. Dewhurst was to</p> <p>19 prevent non-citizens from voting in elections and you</p> <p>20 responded, no; do you remember that?</p> <p>21 A. I think I said, no, except to the extent it ties</p> <p>22 into making sure all voters are eligible.</p> <p>23 Q. Does this letter, Exhibit 88, cause you in any</p> <p>24 way to modify your testimony about Mr. Dewhurst's</p> <p>25 purpose in advancing Senate Bill 14?</p>	<p style="text-align: center;">340</p> <p>1 sort of talking points.</p> <p>2 Q. Did you draft this?</p> <p>3 A. I think I did.</p> <p>4 Q. Do you see at the bottom where it says, likely</p> <p>5 questions from opponents?</p> <p>6 A. Yes.</p> <p>7 Q. Do you see it doesn't include anything about</p> <p>8 concerns about impact of minority voters?</p> <p>9 A. I'm sorry, repeat.</p> <p>10 Q. It doesn't include any questions about, what's</p> <p>11 the impact on minority voters.</p> <p>12 A. That is not one of the three questions.</p> <p>13 Q. Right. Is there a reason --</p> <p>14 A. Other than -- I'm sorry.</p> <p>15 Q. Pardon?</p> <p>16 A. Other than perhaps the last one, what about</p> <p>17 people who do not have access to photo ID?</p> <p>18 Q. Is there a reason why you didn't have any concern</p> <p>19 or list a likely question from opponents related to</p> <p>20 minority voters?</p> <p>21 MR. SWEETEN: You're asking for him to</p> <p>22 reveal his thoughts and mental impressions when he is</p> <p>23 formulating this document. That is matter of</p> <p>24 legislative privilege and I'm asserting that objection.</p> <p>25 It also is matter potentially that impacts the</p>



<p style="text-align: center;">341</p> <p>1 attorney/client privilege. So your question as to why 2 something wasn't included is privileged.</p> <p>3 Q. (By MS. WESTFALL) Are you going to assert 4 privilege?</p> <p>5 A. To the extent that it was -- yes.</p> <p>6 Q. Is there a second page to this document missing 7 from this document?</p> <p>8 A. I'm not sure.</p> <p>9 Q. Do you recall whether there was an additional 10 page of this document?</p> <p>11 A. I don't recall.</p> <p>12 MS. WESTFALL: Could you mark this as 90. (Exhibit No. 90 was marked.)</p> <p>13 Q. (By MS. WESTFALL) You've been handed what's been 14 marked as Exhibit 90; do you recognize this document?</p> <p>15 A. No.</p> <p>16 Q. Is this a document from Mr. Battle in your office 17 to Jesse Ancira?</p> <p>18 A. Yes, appears to be.</p> <p>19 Q. Have you ever seen this document before?</p> <p>20 A. I don't recall. It looks like -- I'm not 21 familiar with it. I don't recall seeing it before.</p> <p>22 Q. To your knowledge, did Mr. Dewhurst ask the 23 Attorney General to file suit in this lawsuit concerning 24 SB 14? Is he the one that requested Attorney General 25</p>	<p style="text-align: center;">343</p> <p>1 know about his intentions to bring suit in this lawsuit?</p> <p>2 MR. SWEETEN: Objection, calls for 3 speculation.</p> <p>4 Q. (By MS. WESTFALL) I'm now going to hand over the 5 podium to Mr. Dunn, of course, reserving the right to 6 keep open this deposition based on our ongoing disputes 7 related to privilege.</p> <p style="text-align: center;">EXAMINATION</p> <p>8 BY MR. DUNN:</p> <p>9 Q. I should have 10 or 15 minutes. I know you've 10 been here a while today. It's Hebert, is that right, 11 Mr. Hebert?</p> <p>12 A. Correct.</p> <p>13 Q. Alright. My name is Chad Dunn. We've not met 14 before, have we?</p> <p>15 A. No.</p> <p>16 Q. I'm going to go through a few documents here. If 17 I lose you I'm sorry, but I'm going to try very hard not 18 go over some ground that's already been covered.</p> <p>19 A. All right.</p> <p>20 Q. First, I would like for you to go with me -- you 21 have the Exhibit there in front of you?</p> <p>22 A. I do.</p> <p>23 Q. Go with me to Exhibit 85. And actually while 24 you're hunting for 85, as I understand your testimony 25</p>
<p style="text-align: center;">342</p> <p>1 Abbot to file suit?</p> <p>2 MR. SWEETEN: Don't reveal communications 3 between Lieutenant Governor Dewhurst and our office. 4 Those are covered by the attorney/client privilege.</p> <p>5 A. I'm not aware of it.</p> <p>6 Q. (By MS. WESTFALL) Turning your attention to 7 Exhibit 90, three pages in at what's marked Bates Stamp 8 the TX00087577; do you see that page?</p> <p>9 A. Yes.</p> <p>10 Q. And do you see down at the paragraph, it starts, 11 giving the delays in the administrative approve process?</p> <p>12 A. Yes.</p> <p>13 Q. Do you see, it indicates that Mr. Battle writes, 14 Lieutenant Governor has indicated he will ask the 15 Attorney General to file suit to defend the policy 16 choices made by the Texas Legislature with regard to 17 voter ID if DOJ prevents the law from taking effect?</p> <p>18 A. Yes.</p> <p>19 Q. Are you aware of whether that statement is true?</p> <p>20 MR. SWEETEN: Objection. Don't reveal 21 communications you've had with Lieutenant Governor 22 Dewhurst. Those are covered by the attorney/client 23 privilege.</p> <p>24 A. I'm not aware.</p> <p>25 Q. (By MS. WESTFALL) Would Mr. Dewhurst himself</p>	<p style="text-align: center;">344</p> <p>1 this morning, you have now left the government employ 2 and you do political consulting; is that true?</p> <p>3 A. That is correct.</p> <p>4 Q. Does political consulting include strategy with 5 respect to elections?</p> <p>6 A. No.</p> <p>7 Q. So what sort of consulting then do you for 8 political candidates?</p> <p>9 A. I don't consult candidates.</p> <p>10 Q. What kind of consulting then do you do?</p> <p>11 A. I work -- right now I have a contract with a 12 group called the Texas Conservative Round Table and they 13 are an education informational public policy group.</p> <p>14 Q. And you help them with their compliance issues or 15 legal status?</p> <p>16 A. My title is executive director.</p> <p>17 Q. I see. Alright.</p> <p>18 A. So it's an umbrella of different things.</p> <p>19 Q. But you don't have any role in terms of 20 elections?</p> <p>21 A. Correct. The organization is not involved in 22 elections.</p> <p>23 Q. And you don't have any other clients where you're 24 involved in elections?</p> <p>25 A. Correct.</p>



<p style="text-align: center;">345</p> <p>1 Q. Were you able to locate 85 for me? 2 A. Yes. 3 Q. Now, if I understand your earlier testimony you 4 prepared and drafted Exhibit 85? 5 A. I believe that is correct. 6 Q. I would like that go through a few of these 7 statements. The first one we can skip the first one. 8 I'm interested in the second one. "Fraudulent 9 registration applications are rampant." Do you see that 10 sentence? 11 A. Yes. 12 Q. And there's a parenthetical after that? 13 A. Correct. 14 Q. Where did you get that information? 15 MR. SWEETEN: In answering the question I 16 don't want you to reveal thoughts or mental impressions 17 about legislation or conversations that you had with 18 legislators or legislative staff. Those would be 19 subject to the legislative privilege. 20 A. Sure. It says they made national news. I think 21 they're from various newspaper accounts at the time. 22 Q. (By MR. DUNN) Well, you think or you know. 23 A. I don't know how else I would have gotten them. 24 Q. All right. Did you get that information from 25 officers in Harris County?</p>	<p style="text-align: center;">347</p> <p>1 Paragraph 2 of Exhibit 85, from testimony Harris County 2 Officials gave. Is that right? Is that what I'm 3 hearing you say? 4 A. It's possible. 5 Q. Alright. As you sit here today, if I can sort of 6 boil down what I think you said, you either got this 7 from Harris County Officials, or the news, or you simply 8 just don't recall; is that right? 9 A. I think I said I probably got it from the news 10 but it's possible I got it from those other sources or 11 some other source. 12 Q. Are you aware of a lawsuit settled by Harris 13 County in the lead up to the 2010 election related to 14 how they handled voter registration applications? 15 A. No. 16 Q. Are you aware that Harris County ultimately 17 entered into a consent decree where -- that 18 significantly scaled back the number of applications 19 that were rejected? 20 A. No. 21 Q. Are you aware that Harris County rejected nearly 22 68,000 voter registration applications in the lead up to 23 the 2008 election? 24 A. I'm not familiar with that number. 25 Q. With respect to the allegation here that's 6,000</p>
<p style="text-align: center;">346</p> <p>1 A. I can't recall. 2 MR. SWEETEN: Same objection with respect to 3 your mental impressions about the legislative process. 4 Don't reveal those in communications that would be 5 protected as we've discussed. But you can answer based 6 on matters of the public record or based on the document 7 itself. 8 A. I can't recall. I'm pretty sure it was from the 9 news. 10 Q. (By MR. DUNN) You're pretty sure you got it from 11 a news source; is that true? 12 A. Correct. 13 Q. Now, I assume that somebody employed for the 14 Lieutenant Governor you had the ability to call local 15 officials and discuss facts and circumstances with them? 16 A. I suppose that's true. 17 Q. All right. Did you contact anybody with the 18 Harris County Voter Registration Office to confirm any 19 of this information? 20 A. I don't recall and I don't -- again, without 21 knowing the date of it it's possible that Harris County 22 officials I think were involved in the testimony in '07 23 or '09. I can't remember if it was one or both of those 24 years. 25 Q. So you might have drawn this conclusion,</p>	<p style="text-align: center;">348</p> <p>1 applications by non-citizens where rejected by Harris 2 County from 2004 to 2007, is your testimony the same 3 that you either got that from the news, from Harris 4 County Officials, or that you don't remember? 5 A. I do not remember the exact source of those 6 numbers. Again, I think I probably got them from news 7 accounts. 8 Q. So if the facts and circumstances demonstrate 9 that the 6,000 applications rejected were rejected 10 because people simply didn't check whether they were a 11 citizen, you don't know one way or the other? 12 A. I'm not familiar it. 13 Q. Is it possible people submit applications and 14 forget to check that they are citizen. They actually 15 are citizens; is that true? 16 MR. SWEETEN: Objection. Calls for 17 speculation. You can answer. 18 A. I don't know if it's true. I know it's possible. 19 Q. (By MR. DUNN) You don't know much about voter 20 registration in terms of the laws and how voter 21 registration applications are actually processed in an 22 office. Is that something you have some expertise in? 23 A. I've never done it. I'm generally familiar with 24 it. 25 Q. You're familiar with the statutes?</p>



<p style="text-align: center;">349</p> <p>1 A. Correct.</p> <p>2 Q. Okay. But have you ever been involved in either</p> <p>3 administering or working in an office that process</p> <p>4 applications?</p> <p>5 A. No.</p> <p>6 Q. Now, I notice under your threat of, Fraud is</p> <p>7 Real, talking point here in Exhibit 85 that the only</p> <p>8 example given here that has an explanation is the Harris</p> <p>9 County. Let me rephrase that. The only one of these</p> <p>10 evidences of the threat of fraud that gives an actual</p> <p>11 example is the Harris County example; would you agree?</p> <p>12 A. Well, there -- it says Acorn in 2008, the team</p> <p>13 system in general. I mean, I'm not sure when you say an</p> <p>14 example. It just says 6,000 applications by</p> <p>15 non-citizens rejected in Harris County and then there</p> <p>16 are two other examples after that. I don't think it</p> <p>17 directly involved Harris County.</p> <p>18 Q. What was it about the 2008 Acorn and 2010 Houston</p> <p>19 vote registration situations that, quote, made them</p> <p>20 scandals that made national news?</p> <p>21 A. The fact that they were widely reported and were</p> <p>22 relatively recent to what I assume was the time of the</p> <p>23 production of this memo that made them relevant.</p> <p>24 Q. Do you remember any details about them?</p> <p>25 A. The 2008 Acorn and 2010 Houston votes?</p>	<p style="text-align: center;">351</p> <p>1 certainly AP Papers were part of that.</p> <p>2 Q. Now, the next line says, Texas Election</p> <p>3 Administration Management System is improving. And how</p> <p>4 so; how was it improving?</p> <p>5 A. My memory is that the Texas Election</p> <p>6 Administration and Management System was designed to do,</p> <p>7 sort of, eventually real-time update the State voter</p> <p>8 rolls based on submissions of whether data -- whether</p> <p>9 voters are alive or dead or eligible or not. And that</p> <p>10 there were some initial technical problems but other</p> <p>11 problems in keeping that accurate. But that I recall</p> <p>12 Secretary of State testimony that it was getting better.</p> <p>13 Q. But it was continuing to have accuracy problems</p> <p>14 according to your statement in Exhibit 85; is that true?</p> <p>15 A. I think there were still in eligible voters</p> <p>16 listed on the team system in my memory.</p> <p>17 Q. From where did you gather that information?</p> <p>18 A. I think from Secretary of State testimony and</p> <p>19 Committee.</p> <p>20 Q. And so how was it that Senate Bill 14 has either</p> <p>21 proposed or ultimately passed was going to resolve the</p> <p>22 team accuracy problems?</p> <p>23 MR. SWEETEN: I'm going to object. I think</p> <p>24 you're asking for matters that are subject to the</p> <p>25 legislative privilege, including his opinions, his</p>
<p style="text-align: center;">350</p> <p>1 Q. Yes, sir.</p> <p>2 A. My memory is that there were, I mean, I remember</p> <p>3 a particular story where, again, the news account was</p> <p>4 someone registered in the name of Mickey Mouse, or Troy</p> <p>5 Aikman, or clearly fictional people. There were other</p> <p>6 larger examples.</p> <p>7 Q. And it's your recollection that those fictional</p> <p>8 registrants actually got on the rolls in Harris County</p> <p>9 Texas?</p> <p>10 A. I don't recall.</p> <p>11 Q. Do you recall that, if not the name of the</p> <p>12 publication, the types of publications that reported</p> <p>13 these events?</p> <p>14 A. I believe it was a major state newspapers.</p> <p>15 Q. Like the Houston Chronicle or Dallas Morning</p> <p>16 News.</p> <p>17 A. Correct.</p> <p>18 Q. Not in other words organizations that have more</p> <p>19 of a political bend?</p> <p>20 A. It was probably all of those. It wasn't one type</p> <p>21 of information in my memory.</p> <p>22 Q. Let me ask it from this angle. The media</p> <p>23 accounts that you relied upon in preparing Exhibit 85,</p> <p>24 are these AP Member Papers?</p> <p>25 A. I don't recall every source I used. But</p>	<p style="text-align: center;">352</p> <p>1 thoughts, mental impressions about Senate Bill 14. So</p> <p>2 I'm going to object on that basis. You can answer based</p> <p>3 upon the public record.</p> <p>4 A. It looks like the heading of No. 1 is, The Threat</p> <p>5 of Fraud is Real. And these look like examples of</p> <p>6 throats of fraud which is one ground that the Supreme</p> <p>7 Court has said is justifies voter ID laws in general.</p> <p>8 Q. (By MR. DUNN) Is it your opinion that Senate</p> <p>9 Bill 14 will improve the accuracy problems with the team</p> <p>10 system?</p> <p>11 MR. SWEETEN: Same objection. Don't reveal</p> <p>12 matters that are subject to the legislative privilege</p> <p>13 including communications with State Agencies,</p> <p>14 communications we've outlined previously. Don't reveal</p> <p>15 matters, thoughts, or impressions about the bill. So to</p> <p>16 the extent you can answer, based upon the public record,</p> <p>17 you're free to do so.</p> <p>18 A. I don't think that SB 14 or Voter ID Law will</p> <p>19 improve team but it will at least as we stated before it</p> <p>20 will have the general purpose of improving the integrity</p> <p>21 of the elections. Which if the team system is</p> <p>22 inaccurate and there are in eligible voters, I think</p> <p>23 those in eligible voters are probably less likely to</p> <p>24 cast a vote.</p> <p>25 Q. (By MR. DUNN) Well, assuming that the team</p>



353

1 system is inaccurate, there's sort of -- it appears to
 2 me to be at least two possible solutions. One was the
 3 -- I suppose your argument, adoption SB 14. Another
 4 would be to actually address the team system and
 5 implement reforms in that system. Would you agree?

6 MR. SWEETEN: Don't reveal thoughts and
 7 mental impressions about the bill. Those are subject to the
 8 legislative privilege. You can answer to the
 9 extent, you can refer to matters of public record. But
 10 don't reveal matters that are subject to the legislative
 11 privilege.

12 A. Right. I think if you wanted to improve the team
 13 system you -- there's lots of ways you could do that.

14 Q. (By Ms. Montgomery) Lots of ways that you could
 15 improve the team system independent from what SB 14 did;
 16 is that true?

17 A. True.

18 Q. Is it true that the overarching concern that you
 19 express in Exhibit 85 under Threat of Fraud is Real
 20 section is the inaccuracy -- is generally the inaccuracy
 21 of the State's voter registration databases; is that the
 22 overarching concern expressed here?

23 A. Let me take a look. Looks like registration
 24 fraud, inaccurate rolls, and inadequate ability to catch
 25 in-person fraud are the three general umbrellas of fraud

354

1 listed there.
 2 Q. Your first bullet is Inaccurate Registration
 3 Rolls. Your second bullet is Registration Problems in
 4 Harris County. Your third bullet is the Team System,
 5 which is the registration database, having accuracy
 6 problems; is that right? Those are the first three
 7 bullets?

8 A. Right.

9 Q. And then the fourth one is, we have this
 10 inadequate system to catch in-person voter fraud; is
 11 that correct?

12 A. That's what I said, yeah.

13 Q. Okay. Now if you would go with me -- is this --
 14 before we do that. On Exhibit 85, is this all of 85?

15 A. I don't recall for sure. I think it is.

16 Q. And to whom did you deliver 85?

17 A. I don't recall, as I stated earlier. Probably my
 18 staff and I don't recall who else might have received
 19 it.

20 Q. Who was your staff?

21 A. The people mentioned earlier. Blaine Brunson and
 22 Julie Rathgeber, our Chief of Staff and Policy Director,
 23 and possibly Frank Battle, our general counsel.

24 Q. Would anybody have participated in drafting the
 25 document?

355

1 A. I can't recall if that was meant to be a summary
 2 of the Supreme Court opinion or if that was intended to
 3 be some sort of -- serve some other purpose.

4 Q. Were there any earlier drafts to Exhibit 85 other
 5 than the one that we have here before us?

6 A. I don't recall.

7 Q. Do you recall at what point -- strike that.

8 At the top of Exhibit 85, at the sort of title it
 9 says, 82 R. I assume that's 82nd regular session?

10 A. Correct.

11 Q. Can you recall whether that was prepared prior to
 12 the beginning of session, or in the middle of it, or
 13 after the end?

14 A. Not at the end. Well, probably not at the end.
 15 I don't recall when otherwise.

16 Q. So other than not being at the end, you can't
 17 otherwise nail down when Exhibit 85 was prepared by you?

18 A. Correct.

19 Q. Now, go with me to Exhibit 86.

20 A. Okay.

21 Q. I know I'm probably going to ask a question or
 22 two that you were already asked, but I couldn't hear and
 23 I didn't want to interrupt during that part of the
 24 review, but why was 86 drafted?

25 A. Why was it drafted?

356

1 Q. Yes, sir.

2 A. My memory is, it's intended to give an overview
 3 of the preclearance process and overview of a memo
 4 issued by the Department of Justice.

5 Q. There was -- I didn't quite understand that.

6 There was a memo issued by the Department of Justice
 7 that you were summarizing?

8 A. Here in the middle Standard Legal Review it says
 9 the 2005 Department of Justice Legal Review of the
 10 Georgia law that refers to a memo by the Department of
 11 Justice.

12 Q. Alright. And how did you obtain that memorandum?

13 A. It's publicly available.

14 Q. Other than the memoranda, did you obtain anything
 15 else in order to prepare Exhibit 86?

16 A. I don't recall.

17 Q. Did anybody else help you participate in the
 18 drafting of 86?

19 A. It's possible our general counsel Frank Battle
 20 looked at it.

21 Q. Were there any other earlier drafts of 86?

22 A. I don't recall.

23 Q. Now, if you need to take a minute to review it, I
 24 would like you to do so. Tell me if there's anything in
 25 86 that, as of today, that you disagree with or you



ESQUIRE
DEPOSITION SOLUTIONS

Toll Free: 800.211.DEPO
Facsimile: 512.328.8139

Suite 220
3101 Bee Caves Road
Austin, TX 78746
www.esquiresolutions.com

<p style="text-align: center;">357</p> <p>1 think you got incorrect in this memo. 2 A. Georgia is not the only State with photo ID 3 requirement anymore. I would have to review the Georgia 4 memo again to be sure that each of these summarizing 5 points about the content of the memo are correct, but 6 I'll assume they are. 7 Q. Well, you were preparing this to be relied upon, 8 I'm sure, by at least the Lieutenant Governor if not 9 other members of the Legislature, is that true? 10 A. I can't recall who it was for, who the intended 11 audience was for. 12 Q. Well, you would agree that you were somewhat 13 careful in the preparation of Exhibit 86? 14 A. I hope so. 15 Q. All right. Now, if you go with me to the 16 underlying section; Is there a Retrogressive Effect, do 17 you see that? 18 A. Yes. 19 Q. And the first question is: Did Texas produce or 20 consider any evidence regarding whether Hispanics or 21 Blacks are less likely to possess or obtain a photo ID. 22 Did I read that correctly? 23 A. Correct. 24 Q. What's the answer to that question? 25 MR. SWEETEN: You can answer the question to</p>	<p style="text-align: center;">359</p> <p>1 Q. Do you remember if there was any analysis 2 actually performed on whether or not Hispanics or 3 African Americans were less likely to possess a photo 4 ID? 5 MR. SWEETEN: You're asking as to matters of 6 public record? 7 MR. DUNN: Yes, that's all. 8 A. And you're talking about for Texas, Hispanics and 9 Blacks or for -- 10 Q. (By MR. DUNN) For Texas Hispanics and Blacks. 11 A. I don't recall whether that was introduced into 12 the testimony or not. 13 Q. You can't think of any examples of such report as 14 you sit here today? 15 A. I think that's -- that were introduced into 16 public testimony, I think that's right. 17 Q. The next question is, how did the minority 18 members of the legislature vote on the proposed changes 19 in the law? Again, constricting your answer to the 20 public record, what's the answer to that question with 21 respect to Senate Bill 14? 22 A. I'd have to review it to be sure. But I think 23 minority members voted against the law. 24 Q. Can we agree that nearly all of them, if not all 25 of them voted against the law in both the House and the</p>
<p style="text-align: center;">358</p> <p>1 the extent that you are not revealing information that's 2 subject to the legislative privilege and concluding 3 communications with legislatures, legislative staff, 4 State Agencies. Also do not reveal your thoughts, 5 mental impressions, or opinions about legislation, 6 including Senate Bill 14. You can refer to matters of 7 the public record in answering the question or the 8 specific memo itself. 9 A. My memory is that that was discussed in the 10 public hearing, probably in each of the years that we 11 discussed today. And I'll assert privilege as to 12 internal communications. 13 Q. (By MR. DUNN) All right. Well, I just want to 14 focus on, without prejudice to our argument on 15 privilege. My questions are just going to focus on what 16 you know that's in the public record. All right? 17 A. Okay. 18 Q. What information do you have that's in the public 19 record that Texas produced or considered regarding 20 whether Hispanics or Blacks are less likely to possess 21 or obtain a photo ID? 22 A. I believe there was testimony from Texas 23 Department of Transportation and from the Secretary of 24 State. And I know evidence from other states was also 25 discussed.</p>	<p style="text-align: center;">360</p> <p>1 Senate? 2 A. The House, I'm less comfortable saying so but 3 yes. 4 Q. The next section, Is there a less retrogressive 5 alternative. And the first question is: Are non-photo 6 documents, birth certificate, social security cards, et 7 cetera, proven to be unreliable or lack security? Is 8 there evidence of that forgery or fraud. Did I read 9 that correctly? 10 A. Correct, yes. 11 Q. How does Senate Bill 4 measure up to that 12 question, using only the public record? 13 MR. SWEETEN: You can answer based upon the 14 public record. Otherwise object, legislative privilege. 15 A. Senate Bill 14 does not include non-photo 16 documents except in some cases. Again, I think there 17 was a disability exception that you could present just a 18 voter registration card without a photo. 19 Q. (By MR. DUNN) Did you -- is there any record or 20 evidence in the public record about birth certificates 21 proven to be unreliable or lack security? 22 A. I think my memory is there was general discussion 23 about non-photo IDs being inherently unreliable because 24 you could never be certain that the person holding a 25 paper document was the actual person eligible to vote.</p>



<p style="text-align: center;">361</p> <p>1 Q. From whom was that testimony given? 2 A. I think it was lots of people. My sense is that 3 it was stated as a matter of fact. 4 Q. Did that testimony in your view prove that a 5 birth certificate was unreliable or lacked security? 6 MR. SWEETEN: You're asking him to reveal 7 his thoughts and mental impressions about legislation in 8 consideration of evidence and you're asking his -- what 9 you're asking is a matter that is legislatively 10 privileged. Again he can refer to what he heard on the 11 public record and he can refer specifically to the 12 document. But as to his thought processes and mental 13 impressions or communications that I have previously 14 asserted, I'm going to instruct you not to answer based 15 upon that. 16 A. I guess I would answer that this doesn't say, are 17 birth certificates unreliable? It says, are any 18 non-photo documents unreliable or do they lack security 19 i.e. Are they more open to fraud or forgery? And so I 20 guess as I sit here today that the answer would be yes. 21 Q. (By MR. DUNN) So it's your opinion that the 22 public record testimony or other supports for this bill 23 demonstrated or to use the word in the memorandum 24 Exhibit 86, prove then that birth certificates and 25 social security cards were unreliable or lacked security</p>	<p style="text-align: center;">363</p> <p>1 MR. SWEETEN: Again, in answering that 2 question, I don't want you to reveal thoughts, mental 3 impressions, or opinions about legislation or 4 communications that we've outlined previously. Those 5 are subject to the legislative privilege. 6 A. I can't recall what, or if any, public testimony 7 touched on those items. 8 Q. (By MR. DUNN) Well, in asking just your opinion 9 based upon the public record, was there a less 10 retrogressive alternative to address the concerns, if 11 there were any on voter fraud, other than Senate Bill 12 14? 13 MR. SWEETEN: Do you understand the 14 question? He's confining it to matters of the public 15 record. Don't reveal internal thought processes, 16 discussions. You can answer as to the public record. 17 A. Right. I guess it depends on what we mean by 18 alternative. Is it less retrogressive alternative to 19 the bill or a less retrogressive alternative that's 20 still insures secure elections. So I guess my short 21 answer is, I don't know. 22 Q. (By MR. DUNN) What did you mean here in Exhibit 23 86 when you used the term less retrogressive 24 alternative? 25 A. Well, I think this is intended to be a summary of</p>
<p style="text-align: center;">362</p> <p>1 measures. Is that true? 2 A. I would have to review the records. I would say 3 it speaks for itself probably. 4 Q. Now, the next question, is there evidence that 5 criminal penalties are sufficient to deter voter fraud; 6 did I read this correctly? 7 A. Yes. 8 Q. What is the answer to that question with respect 9 to Senate Bill 14, using only the public record? 10 MR. SWEETEN: Don't reveal matters of 11 legislative privilege. You can answer. 12 A. My memory of the -- I don't recall from the 13 public record. 14 Q. (By Ms. Montgomery) The next question is: Are 15 there additional forms of photo ID that can be accepted 16 for voting? Did I read that correctly? 17 A. Yes. 18 Q. What is the answer to that question using only 19 the public record for Senate Bill 14? 20 A. The -- it is not every type of photo ID that is 21 acceptable under SB 14. 22 Q. So with regard to the questions here under Is 23 there a less retrogressive alternative, you can't 24 provide testimony today whether Senate Bill 14 presents 25 the least retrogressive alternative or not is that true?</p>	<p style="text-align: center;">364</p> <p>1 the 2005 DOJ opinion -- staff opinion. 2 Q. So in trying to summarize the DOJ staff opinion 3 as it related to Georgia, is it your testimony you 4 weren't able to understand what a less retrogressive 5 alternative meant to the DOJ? 6 A. And to the DOJ reviewing the Georgia law it 7 probably meant a less retrogressive alternative than 8 that implemented by law. 9 Q. And is it your opinion based upon the public 10 record and your research of the Georgia law and Senate 11 Bill 14 that Texas's Senate Bill 14 is less 12 retrogressive than the Georgia law? 13 MR. SWEETEN: Objection you're asking for 14 his mental impressions about legislation particularly 15 Senate Bill 14. That is a matter of legislative 16 privilege. 17 A. The question is: Is the SB 14, in my opinion, 18 less retrogressive than -- 19 Q. (By MR. DUNN) The Georgia law? 20 MR. SWEETEN: Don't reveal thoughts, mental 21 impressions regarding the legislation or communications 22 you've had with legislators of the other enumerated 23 groups I've been talking about today. 24 A. Sure. I would have to review the Georgia law to 25 be sure.</p>



365

1 Q. (By MR. DUNN) Now, the next section says, Does
 2 the new law include mitigating effects? The first
 3 sentence is, Are photo IDs free of charge and widely
 4 available? Is that true under Senate Bill 14?

5 A. I believe it is, yes.

6 MR. SWEETEN: Same objection.

7 Q. (By MR. DUNN) What information do you have from
 8 the public record that the free ID's that can be
 9 obtained from DPS are widely available?

10 A. I recall testimony about the number of DPS
 11 offices and other locations to obtain the photo IDs.

12 Q. Did you recall that from the public record that
 13 there were a number of locations in the State that were
 14 hundreds of miles from the local DPS office?

15 A. I don't recall the number of miles.

16 Q. Do you recall any testimony or evidence that some
 17 DPS offices even in urban locations though close in
 18 proximity to citizens have extraordinary wait times?

19 A. I do recall a discussion about wait times at
 20 offices and I think it was in the context of pending
 21 litigation -- I mean, pending legislation designed to
 22 address those areas that were having long wait times.

23 Q. What do you recall and those wait times?

24 A. That some people had to wait a long time.

25 Q. Do you remember what locations that occurred at?

367

1 A. Right. I don't recall any -- I don't think I
 2 publicly addressed these.

3 Q. (By MR. DUNN) Do you know -- well, let me ask it
 4 this way. Did you direct anybody to go about answering
 5 these questions in Exhibit 86 as they applied to Senate
 6 Bill 14?

7 A. In public or internally?

8 Q. Anywhere. Not asking the result of the review,
 9 just asking if you're aware -- well, not aware, if you
 10 assigned anybody the project of answering these
 11 questions in Exhibit 86 as they applied to Senate Bill
 12 14?

13 A. I'll assert the privilege earlier mentioned.

14 Q. Do you know whether there was any review by any
 15 party starting publicly as to the questions that you
 16 pose in Exhibit 86 as to Senate Bill 14?

17 MR. SWEETEN: Caution you on legislative
 18 privilege. Don't reveal communications or your thoughts
 19 or mental processes regarding legislation.

20 A. Right. I'll assert legislative privilege.

21 Q. Where are we on time?

22 THE REPORTER: He's been on the record
 23 28 minutes.

24 MR. DUNN: I probably have five to seven
 25 more minutes.

366

1 A. I think my memory is that Houston was mentioned.
 2 But I don't remember what other locations.

3 Q. Do you remember which location in Houston?

4 A. No.

5 Q. Do you remember any information in the public
 6 record on whether or not there were locations at the DPS
 7 offices with long wait times and where those offices
 8 were in relation to minority population centers?

9 A. My memory is that it was opponents of the bill
 10 arguing that, as you said, minority populations would be
 11 adversely impacted by that.

12 Q. Did you see any evidence in the public record to
 13 contest that allegation made by minority representatives
 14 or Senators?

15 A. I believe the questions were directed to a
 16 Department of Transportation official and I don't recall
 17 her exact responses.

18 Q. In terms of posing these question that you posed
 19 in Exhibit 86, did you undertake any effort to answer
 20 these questions as they applied to Senate Bill 14?

21 MR. SWEETEN: In answering his question
 22 don't reveal mental impressions, opinions about
 23 legislation or communications that you had with the
 24 individuals we've enumerated previously. You can answer
 25 as to matters of the public record.

368

1 Now, skipping down to the, How does the law
 2 compare to laws of other states, is it more or less
 3 restrictive than the identification laws in other
 4 states? Did you conduct an analysis to answer that
 5 question?

6 MR. SWEETEN: Don't reveal your thoughts,
 7 mental processes, impressions about legislation in
 8 answering the question or communications that you've had
 9 with legislators, staff, State Agencies, Texas Ledge
 10 Council.

11 Q. (By MR. DUNN) And again, I'm going to withdraw
 12 that question and ask it this way: Relying on only the
 13 public record, which is the statute as passed, Senate
 14 Bill 14, the evidence that you're aware of in the public
 15 record supporting it and the laws as passed in other
 16 states is clearly available to anyone, did you develop
 17 an opinion on whether or not Senate Bill 14 is more or
 18 less restrictive than identification laws in other
 19 states?

20 A. I don't recall. I recall a general discussion in
 21 the Committee and how this law compares to Georgia. And
 22 again, without knowing the timing it's -- I can't recall
 23 if it was Georgia, Indiana, Mississippi, Louisiana,
 24 other states involved or if it was limited to Georgia.

25 Q. Now, moving to the last paragraph in the last



ESQUIRE
DEPOSITION SOLUTIONS

Toll Free: 800.211.DEPO
Facsimile: 512.328.8139

Suite 220
3101 Bee Caves Road
Austin, TX 78746
www.esquiresolutions.com

<p style="text-align: center;">369</p> <p>1 section under Conclusion, last sentence of the first 2 paragraph, Without inclusion of these three options, 3 other forms of IDs fail-safe, non-photo ID options, it 4 seems doubtful the DOJ staff will recommend preclearance 5 of the Photo ID Law. You drafted that sentence?</p> <p>6 A. I think so, yes.</p> <p>7 Q. I think I'm just about finished.</p> <p>8 In your preparations of Exhibits 86, 85 and 89, 9 did you undertake any analysis as to what types of data 10 the State collects on voters in terms of race and ID 11 availability?</p> <p>12 MR. SWEETEN: In answering that question, 13 don't reveal your thoughts, mental impressions regarding 14 -- or opinions about legislation or furtherance of the 15 legislative process nor communications that we've 16 outlined previously. If you can't answer it without 17 doing that then do not do so. Otherwise you can refer 18 to the matters of the public record.</p> <p>19 A. I'll assert privilege.</p> <p>20 Q. (By Mr. Dunn) Alright. I think subject to the 21 court's rulings, I'm finished.</p> <p>22 MR. SWEETEN: Reserve questions to the time 23 of trial.</p> <p>24 (Deposition concluded.)</p> <p>25</p>	<p style="text-align: center;">371</p> <p>1 I, BRIAN HEBERT, have read the foregoing 2 deposition and hereby affix my signature that same is 3 true and correct, except as noted above.</p> <p>4 BRIAN HEBERT THE STATE OF TEXAS)) 5 COUNTY OF _____) 6 Before me, _____, on this day personally appeared BRIAN HEBERT, known to me (or proved to me under oath or through 7 (description of identity card or other document) to be 8 the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the 9 same for the purposes and consideration therein expressed. 10 Given under my hand and seal of office this _____ day of _____</p> <p>11 12 NOTARY PUBLIC IN AND FOR THE STATE OF 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: center;">370</p> <p>1 CHANGES AND SIGNATURE 2 RE: STATE OF TEXAS VS. HOLDER</p> <p>3 4 PAGE LINE CHANGE REASON 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: center;">372</p> <p>1 IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA</p> <p>2 3 STATE OF TEXAS)) 4 VS.) NO. 12-CV-128) (DST, RMC, RLW) 5) 6 ERIC H. HOLDER, JR.,) ET AL) ***** 7 CERTIFICATE FROM THE 8 ORAL DEPOSITION OF BRIAN HEBERT ***** 9 10 I, Janalyn Reeves, a Certified Shorthand Reporter in and for the State of Texas, do hereby certify that 11 the foregoing deposition is a full, true and correct 12 transcript; 13 That the foregoing deposition of BRIAN HEBERT, the 14 Witness, hereinbefore named was at the time named, taken 15 by me in stenograph on May 29, 2012, the said Witness 16 having been by me first duly cautioned and sworn to tell 17 the truth, the whole truth, and nothing but the truth, 18 and the same were thereafter reduced to typewriting by 19 me or under my direction. The charge for the completed 20 deposition is \$_____ due from Defendant. 21) That pursuant to the Federal Rules of Civil 22 Procedure, the Witness shall have 30 days after being 23 notified by certified mail, return receipt requested, by 24 the deposition officer that the original deposition transcript is available in her office for review and</p>

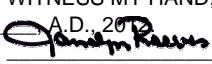


373

1 signature by the Witness and if any corrections made are
 2 attached hereto;
 3 () That by agreement of counsel, a reading condensed
 4 copy of the deposition transcript along with the
 5 full-size original changes and Signature Sheet has been
 6 sent to _____ on _____ for review and
 7 signature within 30 days and if any corrections returned
 8 are attached hereto;
 9 () That by agreement of counsel, the deposition
 10 officer is instructed to release the original deposition
 11 transcript to _____ on _____, for review and
 12 signature, and the deposition officer is thereafter
 13 released of any further responsibility with regard to
 14 the original.
 15 () That the Witness shall have thirty (30) days for
 16 review and signature of the original transcript and if
 17 any corrections returned are attached hereto.
 18 () That the signed transcript () was () was not
 19 received from the Witness within 30 days.
 20 () That the examination and signature of the Witness
 21 is waived by the Witness and the parties;
 22 That the amount of time used by each party at the
 23 deposition is as follows:
 24 Ms. Westfall - 6 hours 55 minutes
 Mr. Dunn - 31 minutes
 Mr. Rosenbert - no time
 25 I further certify that I am neither counsel for,

374

1 related to, nor employed by any of the parties in the
 2 action in which this proceeding was taken, and further
 3 that I am not financially or otherwise interested in the
 4 outcome of the action.

5 WITNESS MY HAND, this the _____ day
 6 of _____, A.D. 20_____
 7 



JANALYN REEVES
 Cert. No. 3631
 Expires Dec. 12
 100 Congress
 Suite 220
 Austin, Texas 78701
 (512)634-1980
 Firm Registration No. 283